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SPECIAL JOINT COMMITTEE

OF THE

SENATE AND HOUSE OF COMMONS

APPOINTED TO INQUIRE INTO THE

CLAIMS OF THE ALLIED INDIAN TRIBES OF BRITISH COLUMBIA, AS SET FORTH IN THEIR PETITION SUBMITTED TO PARLIAMENT IN JUNE 1926

REPORT AND EVIDENCE

Printed by Order of Parliament

OTTAWA
F. A. ACLAND
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
1927

APPENDIX

TO THE

JOURNALS OF THE SENATE OF CANADA

First Session of the Sixteenth Parliament

1926-27

SPECIAL JOINT COMMITTEE

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Stevens, Hon. H. H.,
Stewart, Hon. Charles *(Edmonton West)*,

WALTER HILL,
Clerk of the Committee for the Commons.

REPORT

OTTAWA, April 9th, 1927.

The Special Committees of the Senate and House of Commons appointed to inquire into the claims of the Allied Indian Tribes of British Columbia, as set forth in their Petition presented to Parliament in June, 1926, beg to submit their second and final Report:—

The Committee convened on March 22nd, 1927, and afterwards with a like Committee of the House of Commons held prolonged sittings on March 30th, 1927, March 31st, 1927, April 4th, 1927, April 5th, 1927, and April 6th, 1927, at which the following witnesses were examined:—

Mr. Duncan C. Scott, Deputy Superintendent General of Indian Affairs;
W. E. Ditchburn, Indian Commissioner for British Columbia;
Mr. W. A. Found, Director of Fisheries;
Mr. John Chisholm, Assistant Deputy Minister of Justice;
Andrew Paull, Secretary of the Allied Indian Tribes of British Columbia;
Chief John Chillihitza, of the Nicola Valley Indian Tribes of British Columbia;
Rev. P. R. Kelly, Chairman of the Allied Indian Tribes of British Columbia;
Chief David Basil, of the Bonaparte Indian Tribe of British Columbia.

In addition to the foregoing witnesses, there also appeared the following Counsel who addressed the Committee on behalf of their respective clients, viz:—

A. E. O'Meara, Counsel for the Allied Indian Tribes of British Columbia;
A. D. McIntyre, Counsel for the Indian Tribes of the Interior of British Columbia.

As Interpreters for Chief John Chillihitza and Chief David Basil, there were also present:—

Mrs. Julian Williams and Mr. William Perreish.

The evidence of the witnesses and the arguments of Counsel were taken down in shorthand and printed from day to day. The printed reports of such evidence and arguments also contain the documents and other material in writing that were submitted to your Committee by the witnesses and the Counsel who appeared before it.

It is thought proper to refer to the manner in which the evidence given by the Rev. P. R. Kelly, Mr. Andrew Paull, Chief Chillihitza and Chief Basil, the Indian witnesses was presented. The Chiefs spoke through their interpreters, who translated the Indian language into English in a competent way. The evidence of Messrs. Kelly and Paull was given in idiomatic English, clearly and forcibly expressed, and both the matter of their evidence and the manner of presentation were highly acceptable to your Committee. Due praise should be accorded them, and the Indian members of their organization can be assured of the competent and thorough fashion in which they dealt with the case.

It may be informative to include here a brief historical retrospect which will summarize the facts regarding the occupation of the country now known as British Columbia.

On March 29th, 1778, the famous explorer Captain Cook with two ships (the Resolution and the Discovery) arrived at Hope Bay near Nootka, which place he made his headquarters and made repairs, and from which point he explored the coast northward until he struck the Arctic ice. The next year Captain Clerke who had accompanied Captain Cook returned to the coast from the Sandwich Islands where the vessels had wintered and continued the

explorations, again making Nootka his headquarters. During the next ten years many ships visited the coast exploring and trading. In 1788 Captain John Meares formed an extensive establishment at Nootka, and in 1799 two Spanish warships under Don Stephen Joseph Martinez appeared at Nootka and seized Captain Meares' buildings and settlement and ships, one of which named the Northwest American was the first boat to be built on the Pacific Coast. As a result of this action on the part of the Spaniards the British Government demanded of Spain restitution of Nootka and the territory tributary thereto, together with an indemnity for losses sustained. For a time Spain resisted this demand and it appeared that war would be the result, but finally a settlement was made by Articles of Convention of October 28th, 1790. The Articles of Convention were to be given effect to at Nootka, and Spain despatched Don Juan Francisco de la Bodega y Quadra while Britain entrusted her interest to Captain George Vancouver with instructions that he should explore the coast and then go to Nootka "to be put in possession of the buildings, districts or parcels of land which were occupied by His Majesty's subjects in the month of April, 1789, agreeable to the first article of the late Convention." These two parties met finally at Nootka but failed to agree as to the area that was to be delivered. Captain Vancouver insisted upon all of that area in which trading and exploration had been carried on by the British, while the Spaniards desired to restrict the area ceded to Nootka. During the following year Captain Vancouver continued his explorations to Alaska and the following year concluded his survey of the whole coast. Finally on March 28, 1795, the actual surrendering of the country was made to Lieut. Thomas Pierce of the Royal Marines by Brig.-General Alva and Lieut. Cosme Bertodano. The whole area claimed by Captain Vancouver was included in the transfer; which area included that territory later known as the State of Washington and the whole coast of British Columbia northward to the Alaskan boundary.

Two other explorers Simon Fraser and Alexander Mackenzie explored portions of interior British Columbia approaching from east of the Rocky Mountains. In each case these well known explorers mistook what was later called the Fraser River for the upper reaches of the Columbia River, indicating that it was considered at that early time that the British territory east of the mountains extended through to the mouth of the Columbia River.

In 1846, the boundary line between Canada and the United States was fixed at the 49th parallel by Great Britain and the United States after a period of warm dispute. Prior to this the British had claimed the territory now known as the States of Washington and Oregon, and it will be noted that these two Governments at that time recognized that one or the other were in possession of this area and by Treaty between the two countries fixed the boundary line.

Later a dispute arose as to whether or not San Juan Island was in British territory or American. The British Government maintained their right to this Island as evidenced by a despatch from Lord Russell to Lord Lyon, British Minister at Washington, dated August 24th, 1859, in which he said:

> Her Majesty's Government must therefore under any circumstances maintain the right of the British Crown to the Island of San Juan.

Again indicating that the land was viewed as belonging to the Crown. This dispute was finally settled by reference to the Emperor of Germany for arbitration in favour of the United States on October 21st, 1872.

In 1858 Lord Lytton wrote Governor Douglas instructions regarding the attitude of the British Government towards the Colony, and used the following language:

> You will keep steadily in view that it is the desire of this country that representative institutions and self-government should prevail in

> British Columbia. . . . A party of Royal Engineers will be despatched to the Colony immediately. It will devolve upon them to survey those parts of the country which may be considered most suitable for settlement, to mark out allotments of land for public purposes, etc.

Here again is evidence of the recognition of the lands as belonging to the Crown. And the record shows that the land was surveyed and lots were later put on sale.

It is claimed that no conquest had ever been made of the territory of British Columbia. The historic records would seem to indicate that this is not accurate. All the posts of the Hudson's Bay Company were fortified and the officers and servants of the Company were prepared to resist hostile attacks. When a fort was established at Victoria a band of Cowichan Indians under Chief Tzouhalen seized and slaughtered several animals belonging to the whites. The official in charge, Roderick Finlayson, demanded payment for the animals, which was peremptorily refused. In this action Chief Tzouhalen was upheld by Chief Tsilatchach of the Songhees and the Indians attacked the fort, but were easily over-awed by artillery and later approached the fort to sue for peace. The historic records contain numerous other like references. The fort just mentioned was established at Victoria in 1848, and in 1849 Vancouver was made a Crown Colony. British Columbia (the mainland and Queen Charlotte Islands) was made a Crown Colony in 1858, and the two colonies were united in 1866. British Columbia entered Confederation on the 20th July, 1871.

The Report of your Committee on the proceedings may now be resumed.

At the outset it was made evident that the Indians were not in agreement as to the nature of their claims. For instance, the representatives of the Indian Tribes in the interior of British Columbia did not make any claim to any land of the Province based on an aboriginal title. The representatives of the Allied Indian tribes, on the other hand, practically rested their whole case upon an alleged aboriginal title through which they claimed about 251,000 square miles out of a total area of approximately 355,855 square miles in the Province of British Columbia. This latter point, for the sake of convenience, should be first dealt with, as its elimination will leave for consideration only matters in regard to which the Indians of British Columbia may be said to have a common interest.

Early in the proceedings it developed that the aboriginal title claimed was first presented as a legal claim against the Crown about fifteen years ago. The claim then began to take form as one which should be satisfied by a treaty or agreement with the Indians in which conditions and terms put forward by them or on their behalf must be considered and agreed upon before a cession of the alleged title would be granted. Tradition forms so large a part of Indian mentality that if in pre-Confederation days the Indians considered they had an aboriginal title to the lands of the Province, there would have been tribal records of such being transmitted from father to son, either by word of mouth or in some other customary way. But nothing of the kind was shown to exist. On the contrary the evidence of Mr. Kelly goes to confirm the view that the Indians were consenting parties to the whole policy of the government both as to reserves and other benefits which they accepted for years without demur. (See page 224 for Mr. Kelly's evidence, also the dispatch of Mr. Pearse at page 227 to be found in full in a dispatch dated 21st October, 1868, from B. W. Pearse to the Chief Commissioner of Lands and Works in the Sessional paper of British Columbia 1876, 39 Vic. page 212-13). The fact was admitted that it was not until about fifteen years ago that aboriginal title was first put forward as a formal legal claim by those who ever since have made it a bone of contention and by some a source of livelihood as well.

The Committee note with regret the existence of agitation, not only in British Columbia, but with Indians in other parts of the Dominion, which agitation may be called mischievous, by which the Indians are deceived and led to expect benefits from claims more or less fictitious. Such agitation, often carried on by designing white men, is to be deplored, and should be discountenanced, as the Government of the country is at all times ready to protect the interests of the Indians and to redress real grievances where such are shown to exist.

Counsel representing the Allied Indian Tribes continued to press the aboriginal title claim upon the attention of successive Governments, and although the Government was willing to litigate the claim, Counsel for the Indians sought permission to take the matter direct to the Imperial Privy Council, instead of first submitting it for judicial decision to the Courts of Canada. This the Government very properly declined to do; but at the same time it made a generous offer to the Indians, the details of which are embodied in an Order in Council passed on June 20th, 1914. The full text of this Order in Council was as follows:—

P.C. 751

Privy Council
Canada

Certified Copy of a Report of the Committee of the Privy Council, approved by His Royal Highness the Governor General on the 20th June, 1914.

The Committee of the Privy Council have had before them a Report from the Superintendent General of Indian Affairs, dated 11th March, 1914, submitting the accompanying memorandum from the Deputy Superintendent General of Indian Affairs upon the Indian claim to the lands of the Province of British Columbia, in which he concurs.

The Committee, on the recommendation of the Superintendent General of Indian Affairs, advise that the claim be referred to the Exchequer Court of Canada with the right of appeal to the Privy Council under the following conditions:—

1. The Indians of British Columbia shall, by their Chiefs or representatives, in a binding way, agree, if the Court, or on appeal, the Privy Council, decides that they have a title to lands of the Province to surrender such title receiving from the Dominion benefits to be granted for extinguishment of title in accordance with past usage of the Crown in satisfying the Indian claim to unsurrendered territories, and to accept the finding of the Royal Commission on Indian Affairs in British Columbia as approved by the Governments of the Dominion and the Province as a full allotment of Reserve lands to be administered for their benefit as part of the compensation.
2. That the Province of British Columbia by granting the said reserves as approved shall be held to have satisfied all claims of the Indians against the Province. That the remaining considerations shall be provided and the cost thereof borne by the Government of the Dominion of Canada.
3. That the Government of British Columbia shall be represented by counsel, that the Indians shall be represented by counsel nominated and paid by the Dominion.
4. That, in the event of the Court or the Privy Council deciding that the Indians have no title in the lands of the Province of British Columbia, the policy of the Dominion towards the Indians shall be governed by consideration of their interests and future development.

All which is respectfully submitted for approval.

RODOLPHE BOUDREAU,
Clerk of the Privy Council.

The Honourable
The Superintendent General
of Indian Affairs.

Instead of accepting the offer thus made by the Government, it was rejected and Counsel for the Indians kept up a correspondence on irrelevant issues with the then Minister of Justice until the latter gentleman ended the controversy with the following letter:

OTTAWA, 14th November, 1914.

The Reverend ARTHUR E. O'MEARA, B.A.,
Prince George Hotel,
Toronto, Ont.

SIR: It is in my view unnecessary to correct the narrative of your letter of the 26th ultimo, because except in the two points which I am going to mention it is immaterial to any question now under consideration.

As to your remark that it has always been the view of those advising the Nishgas that the only feasible method of securing a judicial determination of the rights of the Indians of British Columbia is that of bringing their claims directly before His Majesty's Privy Council, I wish you would realize and endeavour to convince those whom you describe as advising the Nishgas that this Government has no power or authority to refer a question directly to His Majesty's Privy Council; that the only constitutional method of obtaining the judicial view of His Majesty in Council relating to a question limited to the internal affairs of Canada is by appeal from the local tribunals, and that His Royal Highness' Government is determined for these reasons, which have been so often explained to you and those whom you profess to represent, not to advise or concur in any proceedings looking to a decision in which the courts of the Dominion shall not have an opportunity to express their views. If, therefore, it be possible for me to make any statement here which can consistently with the amenities of official correspondence, impress you with the futility of urging upon this government a reference direct to the Judicial Committee, I beg of you to consider that statement incorporated in this letter.

The policy of the Government with regard to the British Columbia Indian question is very clearly stated in the Order in Council of 20th June last, and you should, I think, be able to perceive that one of the conditions upon which further progress may be made is that the Indians shall come under the obligation defined by the first enumeration of the Order in Council. You state that the Order in Council has been brought before the Nishgas Indians, and that they will, as soon as possible, place their answer before the Government. So far it is well, but when you say that it is clearly necessary that before the Nishgas answer they should be advised regarding the procedure of the courts, and demand to be informed under the authority of what enactment and for what reasons a reference to the Exchequer Court is proposed, I may I trust be permitted to observe that the essential question for consideration of the Nishgas is as to whether, if their alleged title be upheld by the ultimate tribunal, they are willing to surrender that title in consideration of benefits to be granted in extinguishment according to the ancient usage of the Crown. I think it would be a pity that this question should be obscured or involved in the difficulties which you have encountered about the procedure, and which the Indians presumably would be no better able to understand. Therefore, without making any further attempt to explain the procedure which perhaps could not succeed within the compass of an ordinary letter, I suggest that the Indians should be permitted to consider the question in which they are really interested

as submitted by the Order in Council. It is unlikely I should think that the Indians would concern themselves with procedure. They have I imagine sufficient discernment to perceive, if their deliberations be not influenced to the contrary, that a question of procedure is at present quite irrelevant; but if necessary you may unhesitatingly assure them that no point of procedure will be permitted to prejudice a decision upon the merits of the case, and that the Government will see to it that the proceedings are brought and conducted in such a manner as to provide for the admission of all the facts and arguments which are material to the controversy.

May I be allowed to add that in view of what I have stated I do not propose to consider the procedure until it is ascertained that the Indians have acquiesced in the conditions of the Order in Council which are preliminary to any procedure.

I have the honour to be,

Sir,

Your obedient servant,

(Sgd.) C. J. DOHERTY,

Minister of Justice.

The Indians did not acquiesce in the conditions of the Order in Council as the Right Honourable C. J. Doherty informed their Counsel in the above letter they would have to do before he would move farther in the matter. Consequently, there was no further action on the part of the Dominion Government.

A change of tactics was adopted in June, 1926. In that month a Petition embodying the Indian claims, based on aboriginal title, was presented to Parliament. The session then in progress terminated abruptly and action on the Petition was not taken until the present session, when the Petition in question was referred to your Committee for enquiry and report.

Having given full and careful consideration to all that was adduced before your Committee, it is the unanimous opinion of the members thereof that the petitioners have not established any claim to the lands of British Columbia based on aboriginal or other title, and that the position taken by the Government in 1914, as evidenced by the Order in Council and Mr. Doherty's letter above quoted, afforded the Indians full opportunity to put their claim to the test. As they have declined to do so, it is the further opinion of your Committee that the matter should now be regarded as finally closed.

While making this declaration the Committee wish to state that they are impressed by the fact that the Indians of British Columbia receive benefits which are in excess of those granted by Treaty to Indians in other parts of Canada. Comparison of these expenditures will be found in the statements made by the Deputy Superintendent General of Indian Affairs at Pages 15-17 of the printed evidence. It is clear that they are not discriminated against; that reserves have been set aside for them sufficient for their needs, and that the obligation for Indians assumed by the Dominion when British Columbia entered Confederation has been generously fulfilled. In considering the extent of this bounty the Committee could not fail to notice from facts submitted that it had exceeded the benefits which appertain to Indian treaties, and that if a treaty had been made, the compensation would have been in comparison much less than the generous expenditures now made on behalf of the Indians in British Columbia, which amounted to $690,683 in 1925-26.

As it was the desire of your Committee to give the very fullest and most sympathetic consideration to all the claims of the Indians and to give them every opportunity to state any existing hardships or disabilities under which

they suffered as residents of the province owing to their native blood, all branches of the subject were dealt with, and by questioning the witnesses and eliciting information from departmental officers, the Committee came into possession of a mass of interesting facts in connection with the various subjects under review. The Indians, in claiming aboriginal title, had given to the provincial government under date of November 12th, 1919, an exhaustive statement of the case, and set forth "conditions proposed as a basis of settlement." It is thought to be highly desirable that your Committee should review these claims and inform Parliament of the extent to which the conditions are at present being met, and to make recommendations that would tend to meet the conditions proposed, where they are not already provided for. It is thought well to deal with these conditions under each sub-head in sequence as shown at page 36 of the Proceedings, and to make such remarks as are relevant:

(1) That the Proclamation issued by King George III in the year 1763 and the Report presented by the Minister of Justice in the year 1875 be accepted by the two Governments and established as the main basis of all dealings and all adjustments of Indian land rights and other rights which shall be made.

The subject matter of the foregoing paragraph has already been dealt with by your Committee in their Finding contained in the recommendation hereinbefore made, and further comment thereon is, therefore, unnecessary.

(2) That it be conceded that each Tribe for whose use and benefit land is set aside (under Article 13 of the 'Terms of Union') acquires thereby a full, permanent and beneficial title to the land so set aside together with all natural resources pertaining thereto; and that Section 127 of the Land Act of British Columbia be amended accordingly.

(5) That adequate additional lands be set aside and that to this end a per capita standard of 160 acres of average agricultural land having in case of lands situated within the dry belt a supply of water sufficient for irrigation, be established. By the word " standard," we mean not a hard and fast rule, but a general estimate to be used as a guide, and to be applied in a reasonable way to the actual requirements of each tribe.

(6) That in sections of the Province in case of which the character of available land and the conditions prevailing make it impossible or undesirable to carry out fully or at all that standard, the Indian Tribes concerned be compensated for such deficiency by grazing lands, by timber lands, by hunting lands or otherwise, as the particular character and conditions of each such section may require.

(7) That all existing inequalities in respect to both acreage and value between lands set aside for the various Tribes be adjusted.

(8) That for the purpose of enabling the two Governments to set aside adequate additional lands and adjust all inequalities there be established a system of obtaining lands including compulsory purchase, similar to that which is being carried out by the Land Settlement Board of British Columbia.

It may be stated at once that the reserves as set apart under Article 13 of the "Terms of Union" and allotted in the report of the Royal Commission on Indian Affairs for the Province of British Columbia, and confirmed by both governments, are held by the Dominion in trust for the full and permanent beneficial interest of the Indians, and all such natural resources pertaining thereto as *are the property of the Indians.* It is interesting to note the progressive steps which have been taken by the two interested governments in the settlement of the claims of the Indians for reserve lands. Such reserves as were set apart before Con-

federation were granted by the Colonial Government. After Confederation, the lands reserved were set apart by a Joint Reserve Commission, and later by a single Commissioner, and the reserves so set apart were scheduled by the province and appropriated as Indian reserves. As it was desirable to further and complete this work, and to allot reserves in territories which were becoming settled and in which it might be difficult later to get suitable lands for Indians, the two governments made an agreement known as the McKenna-McBride agreement, and later formed a Royal Commission on Indian Affairs for the Province of British Columbia; the duty of the Commission being to review and revise the whole reserve situation, to provide new reserves, and to have the power of disallowing reserve lands not required for Indian use, but in such cases preserving one moiety of the Indian interests. By this arrangement when final confirmation of the reserves was made, any provincial interests would disappear and the Dominion, in trust for the Indians, would have the full use and benefit of these reserves. The Commissioners visited all parts of the Province, and everywhere and at all times the Indians gave evidence as to their requirements, and it is clear that the Commissioners endeavoured to meet the wishes of the Indians wherever it was possible to do so and to give them adequate reserves.

After the report had been received by both governments, two competent officers of the governments were delegated to make a further examination into the needs of the Indians, and representative Indians were appointed to confer with these officers and to make further representations. This action was completed and the report of the Commission and a schedule of reserves was adopted and confirmed by both governments under the statutory provisions of Chap. 51, 1920. It is apparent that the average of agricultural land set up by the proposed conditions of settlement is not applicable to British Columbia, where the Indians generally cannot derive their subsistence from agriculture. The allotment of reserves, of which there are 1,573 in the province, preserves to the Indians in a remarkable degree their old fishing stations and camping grounds, and the action of the Commissioners was evidently extended to preserving Indian rights in traditional locations which the Indians had enjoyed in the early days.

(3) That all existing reserves not now as parts of the Railway Belt or otherwise held by Canada be conveyed to Canada for the use and benefit of the various Tribes.

This work is now in progress, and without delay the reserves confirmed by both Governments will be conveyed by the province to the Dominion.

(4) That all foreshores whether tidal or inland be included in the reserves with which they are connected, so that the various Tribes shall have full permanent and beneficial title to such foreshores.

The Indians have riparian rights on all reserves on tidal waters. The ownership of the foreshore being in the province, the Superintendent General of Indian Affairs endeavoured to obtain some concessions on behalf of the Indians in this regard. The Prime Minister of British Columbia under date of April 23, 1924, stated as follows:

The Honourable
The Superintendent General of Indian Affairs,
Ottawa.

Dear Sir,—Referring to our conversation of yesterday and having reference to the fears expressed by the Indians that where their reserves fronted on the water, access to their lands might be interfered with by construction of wharfs, docks, booms or other obstructions erected or placed along any foreshore on account of ownership of such foreshore being in the Province, as I expressed myself yesterday, I would favour a

policy treating the Indians on exactly the same footing as I would treat the whites, and would if necessary advise the Government of the Province to give the Indian Department a written assurance to that effect. I am, however, of the opinion that no such assurance is necessary, as I think the principle of Riparian Rights would apply to any Indian reserves having water frontage to the same extent as Riparian Rights would apply to the same lands were such lands subject to the private ownership of any person other than an Indian. In other words, Riparian Rights would accrue to the Indians (through the Indian Department) to the same extent as they would apply to a white owner. I should be pleased if you would obtain the advice of your legal Department on this phase of the situation.

I am,

Yours faithfully,

(Signed) JOHN OLIVER.

(9) That if the Governments and the Allied Tribes should not be able to agree upon a standard of lands to be reserved that matter and all other matters relating to lands to be reserved which cannot be adjusted in pursuance of the preceding conditions and by conference between the two governments and the Allied Tribes be referred to the Secretary of State for the Colonies to be finally decided by that Minister in view of our land rights conceded by the two Governments in accordance with our first condition and in pursuance of the provisions of Article 13 of the "Terms of Union" by such method of procedure as shall be decided by the Parliament of Canada.

It would appear to be a sufficient answer to this condition to state that under the provisions of Article 13 of the "Terms of Union" a reference to the Secretary of State for the Colonies was only to be resorted to if the two governments failed to agree. They have agreed under statutory authority and the allotment of reserves is therefore concluded.

(10) That the beneficial ownership of all reserves shall belong to the Tribe for whose use and benefit they are set aside.

When the reserves are conveyed by the Province to the Dominion, which procedure is now in progress, they shall belong to the Indian Bands for which they are set apart. Tribal ownership is not recognized unless by desire of the Bands comprising the Tribe. If any such case arises due consideration will be given to all the surrounding circumstances.

(11) That a system of individual title to occupation of particular parts of reserved lands be established and brought into operation and administered by each Tribe.

Provision is already made in the Indian Act for the issue of location tickets which are equivalent to a title in fee simple. Indians of British Columbia are at liberty to take advantage of this provision at any time.

(12) That all sales, leases and other dispositions of land or timber or other natural resources be made by the Government of Canada as trustee for the Tribe with the consent of the Tribe and that of all who may have rights of occupation affected, and that the proceeds be disposed of in such a way and used from time to time for such particular purposes as shall be agreed upon between the Government of Canada and the Tribe together with all those having rights of occupation.

Apart from the emphasis which seems to be placed upon tribal ownership in this paragraph, it merely contains a statement of what is now the procedure of the Department as provided by statute.

(13) That the fishing rights, hunting rights and water rights of the Indian Tribes be fully adjusted. Our land rights having first been established by concession or decision we are willing that our general rights shall after full conference between the two Governments and the Tribes be adjusted by enactment of the Parliament of Canada.

Your Committee heard evidence on the disabilities of the Indians of British Columbia arising from restrictive regulations regarding fishing, hunting and the use of water for irrigation purposes. The Indian Commissioner for British Columbia and the Director of Fisheries, of the Department of Marine and Fisheries, were heard on this subject. The fishing industry is a most important one in the life of the Indians, and at least one-third of the fishermen engaged in the commercial fisheries are Indians and a large number of Indian women are employed in the canneries. The chief complaint was against the restriction to take fish for food purposes, and in this matter the sympathies of the Committee are with the Indians; at the same time the necessity of preserving by adequate regulations the fisheries is paramount. By co-operation between the Department of Indian Affairs and the Department of Marine and Fisheries grievances have gradually disappeared and we would commend to the Government the desirability of having as close co-operation as possible not only between these two Departments, but between all the Departments of the Dominion Public Service that have to deal with problems affecting Indians or Indian reserves, and that in all cases an extremely sympathetic and liberal view of the Indian situation should influence regulations and their enforcement as against Indians. The amelioration of local difficulties must be worked out by local officers, and we are convinced of the importance of leniency in the enforcement of the regulations that might, if rigidly enforced, work hardship and even suffering upon Indians.

It must be recognized that Indians have had from the earliest times, special interest in hunting, and that in those regions where their subsistence is obtained from the hunt they should receive every consideration. It is clearly to the benefit of the Indians that there should be strict regulations to conserve the fur-bearing animals, and the Provincial regulations appear to have that in view. It is the duty of the Department of Indian Affairs to see that any privileges or rights which the Indians have under these regulations are taken advantage of to the fullest degree. In this connection it is noted that the Provincial authorities do not exact any license fee from Indians for hunting or trapping, and like exemption of Indians in so far as commercial fishing licenses is concerned might be considered favourably by the Department of Marine and Fisheries.

Water for irrigation, where this is a necessity for successful agriculture, is a matter of the utmost importance in certain districts of British Columbia. These affairs are regulated by the Province, and the Indians are on the same footing as ordinary citizens in the allotment of the available water. In the endeavour to obtain water records, the Department of Indian Affairs has been insistent in advocating the claims of the Indians to sufficient water for their reserve lands, and where success has not followed, it has been owing to the insufficiency of water for all claimants or from some inherent flaw in the original records. The number of cases of the latter class is, however, very small. We would recommend that the Department of Indian Affairs continue to give the most careful attention to the development of irrigation systems on the reserves so that the water may be utilized to the fullest extent, and we commend co-operation between the Department and the Water Powers Branch of the Department of the Interior.

(14) That in connection with the adjustment of our fishing rights the matter of the international treaty recently entered into which very

seriously conflicts with those rights, be adjusted. We do not at present discuss the matter of fishing for commercial purposes. However, that matter may stand. We claim that we have a clear aboriginal right to take salmon for food. That right the Indian Tribes have continuously exercised from time immemorial. Long before the Dominion of Canada came into existence that right was guaranteed by Imperial enactment, the Royal Proclamation issued in the year 1763. We claim that under that Proclamation and another Imperial enactment, Section 109 of the British North America Act, the meaning and effect of which were explained by the Minister of Justice in the words set out above, all power held by the Parliament of Canada for regulating the fisheries of British Columbia is subject to our right of fishing. We therefore claim that the regulations contained in the treaty cannot be made applicable to the Indian Tribes, and that any attempt to enforce those regulations against the Indian Tribes is unlawful, being a breach of the two Imperial enactments mentioned.

The privilege of taking salmon for food purposes has been dealt with under heading No. 13. As there is no international treaty in existence between the Dominion and the United States, further reply to this clause seems unnecessary.

(15) That compensation be made in respect of the following particular matters.

1. Inequalities of acreage or value or both that may be agreed to by any Tribe.
2. Inferior quality of reserved lands that may be agreed to by any Tribe.
3. Location of reserved lands other than that required agreed to by any Tribe.
4. Damages caused to the timber or other natural resources of any reserved lands as for example by mining or smelting operations.
5. All moneys expended by any Tribe in any way in connection with the Indian land controversy and the adjustment of all matters outstanding.

Of the sub-heads of this section, Nos. 1, 2 and 3 have been dealt with. No. 4, *re* damages to timber and other natural resources: Claims have been made and compensation received in such cases, and as other cases arise, they should be dealt with in a like manner. No. 5: As the expenditure of moneys by Indians in connection with their alleged land claims have been undertaken without the authority or control of the government, the request should not be complied with.

(16) That general compensation for land to be surrendered be made:

1. By establishing and maintaining an adequate system of education, including both day schools and residential industrial schools, etc.
2. By establishing and maintaining an adequate system of medical aid and hospitals.

Regarding Sub-head No. 1: There is already in existence throughout the province a system of education for Indians. There are at present 16 residential schools and 42 day schools in operation in the province. The enrolment in residential schools is 1,506 and in day schools 1,309. The residential schools are conducted under an arrangement with the Churches interested in Indian education. They are financed by payment of a Government per capita

grant. The Department reserves the privilege of approving the more important appointments to the staffs of these institutions and has in effect a thorough and efficient system of inspection. Tuition is academic and vocational. In addition to the scholastic studies girls are taught domestic science and boys are given manual and technical education that will fit them to meet the conditions of life in the respective sections of the province to which they belong. In the opinion of the Committee it is desirable that this system should be maintained and extended and that residential and day schools be gradually established in districts not already provided for; that the tuition should tend to emphasize the industrial side; and that individual Indians should be given opportunities to develop natural aptitudes. Arrangements should also be made to enable Indians of pronounced ability, who wish to qualify for the professions or fit themselves for positions in the industrial fields, to pursue the necessary studies in institutions of higher learning, each case to be considered on its merits.

Regarding Sub-head No. 2: There is already a system of medical aid and hospitals throughout the province, and we note that one large item of expenditure made on behalf of the Indians is for this very purpose, the expenditure for the last fiscal year being $102,000. It seems to your Committee that this item of expenditure might be developed and that as Parliament provides funds for the purpose, hospitals should be established, particularly for the treatment of tubercular Indians or for the fullest use of such hospitals established for the citizens of the province. Special efforts should at all times be made,—and it is as much in the interest of the white citizens as of the Indians,—to diminish the incidence of tuberculosis and other diseases that are communicable. Where necessary, hospitals for the treatment of general diseases should be established, and by the employment of nurses and field matrons, the Indian women should be instructed in the care of children, and as required, the medical staff should be enlarged.

> (17) That all compensations provided for by the two preceding paragraphs and all other compensation claimed by any Tribe so far as may be found necessary, be dealt with by enactment of the Parliament of Canada and be determined and administered in accordance with such enactment.

The Parliament of Canada has power to legislate for Indians and Indian reserves, and no doubt will, as occasion requires, exercise that power.

> (18) That all restrictions contained in the Land Act and other Statutes of the Province be removed.

By the confirmation of the Report of the Royal Commission on Indian Affairs the restrictions of the Land Act have been removed, and as it was not shown that other statutes of the Province of British Columbia were oppressive or had not been enacted in the interests of the Indians, your Committee does not consider it proper to make any reference in this regard.

> (19) That the Indian Act be revised and that all amendments of that Act required for carrying into full effect these conditions of settlement dealing with the matter of citizenship, and adjusting all outstanding matters relating to the administration of Indian Affairs in British Columbia be made.

Parliament will no doubt revise and amend the Indian Act from time to time in the interests of the Indians as often as found necessary.

(20) That all moneys already expended and to be expended by the Allied Tribes in connection with the Indian land controversy and the adjustment of all matters outstanding be provided by the Governments.

Your Committee cannot recommend the appropriation of any public funds for this purpose, but rather that parliamentary appropriations, if and when made, should be to further the progress and civilization of the Indians themselves.

In addition to the paragraphs already dealt with, the Indians had made certain additional claims before the Deputy Superintendent General in Victoria in 1923, and these may now be dealt with seriatim:—

MOTHERS' AND WIDOWS' PENSIONS WERE ASKED FOR AS EFFECTIVE IN BRITISH COLUMBIA FOR WHITE WOMEN

Parliament provides funds for sustaining indigent or destitute Indians in British Columbia and applications from Indians who require assistance in this way should be made through the Indian Agents to the Department.

CASH COMPENSATION FOR ANNUITIES SIMILAR TO TREATY ANNUITIES

It may be remarked with reference to the payment of annuities that the policy for the payment of annual sums to individual Indians was inaugurated in the early days, having in view the then condition of the Indians, and that the annuity might be a source of revenue for their support, but conditions have changed so materially that the need and usefulness of such a per capita payment to Indians of British Columbia is negligible. In lieu of an annuity your Committee would recommend that a sum of $100,000 should be expended annually for the purposes already recommended, that is, technical education, provision of hospitals and medical attendance, and in the promotion of agriculture, stock-raising and fruit culture, and in the development of irrigation projects. An annual expenditure of this amount for these purposes would seem to be far more applicable to the Indians in their present condition than the payment of any per capita amount.

In concluding this Report your Committee would recommend that the decision arrived at should be made known as completely as possible to the Indians of British Columbia by direction of the Superintendent General of Indian Affairs in order that they may become aware of the finality of the findings and advised that no funds should be contributed by them to continue further presentation of a claim which has now been disallowed. Furthermore, the Committee recommend that this report together with the evidence, be printed as an appendix to the Journals of the Senate, and also in blue book form to the number of one thousand (1,000) copies and that Rule 100 relating thereto be suspended.

All which is respectfully submitted.

HEWITT BOSTOCK,
Chairman.

ADDENDUM

Your Committee begs to report that after all evidence had been received, the expected letter referred to by Mr. Andrew Paull at pages 96 and 97 of the printed evidence was laid before the Committee. The text of the letter follows, and it will be observed that the diary of Father Fouquet, while it mentions the meeting referred to, does not disclose that any promises were made by the Governor:—

St. Mary's Mission, January 3, 1923.

Dear Paul,—Excuse me of my delay on answering to your letter of Nov. the 16th. I looked over our old papers. I am sorry to say that I could not find anything that would help the Indian cause. Rev. Father Fouquet mentioned an Indian meeting on the 24th of May, 1864, when several Indian chiefs made some speeches to the new Governor at New Westminster. The Governor answered to them. But unfortunately Father never mentioned what has been said in that circumstance, when 4,000 Indians were gathered headed by 60 Indian chief. Look please in New Westminster archives of 1864. You may find some information; if those papers have not been destroyed by the big fire.

I hope Dear Paul that the year 1923 will successfully terminate that long struggle about the Indian rights. I enclose here an almanack and wish to you and your family a good and happy year.

Note.—This Report was concurred in on 14th April, 1927. See Journals, p. 431.

PETITION TO PARLIAMENT, JUNE, 1926

The Petition of the Allied Indian Tribes of British Columbia humbly showeth as follows:

1. This Petition is presented on behalf of the Allied Indian Tribes of British Columbia by Peter R. Kelly, Chairman duly authorized by resolution unanimously adopted by the Executive Committee of allied Tribes on 19th December, 1925.

2. When British Columbia entered Confederation Section 109 of the British North America Act was made applicable to all public lands with certain specific exceptions. By virtue of the application of this Section it was enacted that public lands belonging to the Colony of British Columbia should belong to the new Province. By virtue of the application of the same Section as explained by the Minister of Justice in January, 1875, all territorial land rights claimed by the Indian Tribes of the Province were preserved and it was enacted that such rights should be an "interest" in the public lands of the Province. The Indian Tribes of British Columbia claim actual beneficial ownership of their territories, but do not claim absolute ownership in the sense of ownership excluding any title of the Crown. It is recognized by the allied Tribes that there is in respect of all the public lands of the Province an underlying title of the Crown, which title at least for present purposes it is not thought necessary to define.

3. In order to make clear what is meant by an "interest" the Petitioners quote the following words of Lord Watson to be found in the Indian Claims Case—L. R. 1897 A. C. at page 210:—"An interest other than that of the Province in the same appears to them to denote some right or interest in a third party independent of and capable of being vindicated in competition with the beneficial interest of the old Province."

4. The position taken by the allied Tribes was placed before Parliament by means of Petition presented to the House of Commons on 23rd March, 1920, and read in the House of Commons and recorded on 26th March, 1920 (Hansard p. 825) and Petition presented to the Senate on 9th June, 1920, to all contents of which two Petitions the Petitioners beg leave to refer.

5. In the month of August, 1910, Sir Wilfrid Laurier, having been advised by the Department of Justice that the Indian land controversy should be judicially decided, met the Indian Tribes of Northern British Columbia at Prince Rupert and speaking on behalf of Canada said—"I think the only way to settle this question that you have agitated for years is by a decision of the Judicial Committee, and I will take steps to help you."

6. By agreement which was entered into by the late Mr. J. A. J. McKenna, Special Commissioner on behalf of the Dominion of Canada and the late Premier Sir Richard McBride on behalf of the Province of British Columbia in the month of September, 1912, and before the end of that year was adopted by both Governments, it was stipulated that by means of a Joint Commission to be appointed, lands should be added to Indian Reserves and lands should be cut off from Indian Reserves. By that agreement it was provided that the carrying out of its stipulations should be a "final adjustment of all matters relating to Indian affairs in the Province of British Columbia."

7. On the 30th day of June, 1916, the Royal Commission on Indian Affairs for the Province of British Columbia appointed in pursuance of the agreement above mentioned issued Report which was placed in the hands of both Governments.

8. In the month of September, 1916, the Duke of Connaught, acting as His Majesty's Representative in Canada and in response to letter which had been addressed to him on behalf of the Nishga Tribes and the Interior Tribes, gave assurances communicated by His Secretary to the General Counsel of allied Tribes in the following words:—

"His Royal Highness has interviewed the Honourable Dr. Roche with reference to your letter of the 29th May and your interview with me and I am commanded by His Royal Highness to state that he considers it is the duty of the Nishga Tribe of Indians to await the decision of the Commission, after which, if they do not agree to the conditions set forth by that Commission, they can appeal to the Privy Council in England, when their case will have every consideration. As their contentions will be duly considered by the Privy Council in the event of the Indians being dissatisfied with the decision of the Commission, His Royal Highness is not prepared to interfere in the matter at present and he hopes that you will advise the Indians to await the decision of this Commission."

9. The allied Tribes have always been and still are unwilling to be bound by the agreement above mentioned and have always been and still are unwilling to accept as final settlement the findings contained in the Report of the Royal Commission.

10. In the year 1920 the Parliament of Canada enacted the law known as Bill 13 being Chapter 51 of the Statutes of that year authorizing the Governor-General in Council to carry out the agreement above mentioned by adopting the Report of the Royal Commission. From the preamble and the enacting words the professed purpose of the Bill appeared to be that of effecting settlement by actually adjusting all matters.

11. In course of debate regarding Bill 13 had in the Senate on 2nd June, 1920, Sir James Lougheed, leader of the then Government in the Senate, answering remarks of Senator Bostock by which was expressed the fear that if the Bill should become law the Indians might "be entirely put out of Court and be unable to proceed on any question of title," gave the following assurance (Debates of Senate—1920 p. 475 col. 2):—

"I might say further, honourable gentlemen, that we do not propose to exclude the claims of Indians. It will be manifest to every honourable gentleman that if the Indians have claims anterior to Confederation or anterior to the creation of the two Crown Colonies in the Province of British Columbia they could be adjusted or settled by the Imperial Authorities. Those claims are still

valid. If the claim be a valid one which is being advanced by this gentleman and those associated with him as to the Indian Tribes of British Columbia being entitled to the whole of the lands in British Columbia this Government cannot disturb that claim. That claim can still be asserted in the future."

12. Upon occasion of interview had with the Executive Committee and the General Counsel of allied Tribes at Vancouver on 27th July, 1923, the Minister of Interior speaking on behalf of the Government of Canada conceded that the allied Tribes are entitled to secure judicial decision of the Indian land controversy and gave assurance that the Dominion of Canada would help them in securing such decision.

13. By Order in Council passed in the month of August, 1923, the Government of the Province of British Columbia adopted the Report of the Royal Commission.

14. By Memorandum which was presented to the Government of Canada on 29th February, 1924, the allied Tribes opposed the passing of Order in Council of the Government of Canada adopting the Report of the Royal Commission upon the ground, among other grounds, that, no matter whatever relating to Indian affairs in British Columbia having been fully adjusted and important matters such as foreshore rights, fishing rights and water rights not having been to any extent adjusted, the professed purpose of the Agreement and the Act had not been accomplished.

15. By Order in Council passed on 19th July, 1924, the Government of Canada, acting under Chapter 51 of the Statutes of the year 1920 and upon recommendation of the Minister of Interior adopted the Report of the Royal Commission.

16. From the Memorandum issued by the Deputy Minister of Justice on 29th February, 1924, answering questions which had been submitted by the allied Tribes to the Government of Canada, the Order-in-Council passed on 19th July, 1914, and the Memorandum issued by the Deputy Minister of Indian Affairs on 9th August, 1924, it clearly appears as is submitted that both the Department of Justice and the Department of Indian Affairs regard the Statute Chapter 51 of the year 1920 as intended, not for bringing about an actual adjustment of all matters relating to Indian affairs, but for the purpose of bringing about a legislative adjustment of all such matters and thus effecting final settlement under the laws of Canada without the concurrence or consent of the Indian Tribes of British Columbia.

17. The allied Tribes submit that, so far as Section 2 being the main enactment of Chapter 51 may be interpreted as being intended for accomplishing the purpose above mentioned and thus bringing to an end all the aboriginal rights claimed by the Indian Tribes of British Columbia, that enactment is in conflict with the provisions of the British North America Act.

18. On the 15th January, 1925, the Executive Committee of the allied Tribes unanimously adopted the following resolution:

"In view of the fact that the two Governments have passed Orders-in-Council confirming the Report of the Royal Commission on Indian Affairs, we the Executive Committee of the allied Tribes of British Columbia are more than ever determined to take such action as may be necessary in order that the Indian Tribes of British Columbia may receive justice and are furthermore determined to establish the rights claimed by them by a judicial decision of His Majesty's Privy Council."

19. In the course of debate had in the House of Commons on the 26th June, 1925, the Minister of Interior speaking on behalf of the Government of Canada in answer to the representations which had been made on behalf of the allied Tribes recognized that the allied Tribes are entitled to obtain from His Majesty's Privy Council decision of the Indian land controversy and agreed that the Government would give authoritative sanction for doing so.

20. With regard to the remark then made by the Minister that the Government would not be justified in providing funds unless " something very concrete " should be presented, the allied Tribes submit that they have already presented " something very concrete ", namely, their own conditions proposed for equitable settlement by their Statement presented to the Government of British Columbia in response to request of that Government in the month of December, 1919, and subsequently presented to the Government of Canada.

21. With regard to the general subject of the funds which as the allied Tribes claim the Dominion of Canada is under the obligation of providing, the allied Tribes have placed in the hands of the Superintendent-General of Indian Affairs the following Memorial:

THE ALLIED INDIAN TRIBES OF BRITISH COLUMBIA TO THE SUPERINTENDENT GENERAL OF INDIAN AFFAIRS

By this Memorial of the allied Indian Tribes of British Columbia it is respectfully submitted as follows:

The allied Tribes submit that the Dominion of Canada is under obligation for providing all funds already expended and all funds requiring hereafter to be expended by the allied Tribes in dealing with the Indian land controversy, in establishing the rights of the allied Tribes, and in bringing about final adjustment of all matters relating to Indian affairs in British Columbia.

The allied Tribes so submit upon grounds briefly stated as follows:

1. Well established precedent relating to judicial proceedings intended for establishing the rights of Indian Tribes and in particular that of the Oka case, which was carried independently to the Judicial Committee of His Majesty's Privy Council by the Indians interested and of which the total cost was provided by the Parliament of Canada.

2. The fact that the Dominion of Canada being by virtue of the British North America Act and the " Terms of Union " Trustee for the Indian Tribes of British Columbia and under all obligations arising from such trusteeship has by entering into the compact with British Columbia above mentioned rendered itself incompetent for taking effective action establishing the rights of the Indian Tribes of British Columbia, as is clearly shown by the Opinion of the Minister of Justice issued in the month of December, 1913, and moreover has put itself in the position of a party in the case upholding the contentions of the Province of British Columbia, and by the acts so stated has placed upon the Indian Tribes the absolute necessity of proceeding independently for establishing their rights.

3. The principle of compensation in respect of all aboriginal land and other rights of the Indian Tribes of British Columbia, responsibility for which has already been conceded by the Dominion of Canada, and of which as the allied Tribes submit the first item consists of the full expenditure required for establishing such rights of the Indian Tribes and bringing about adjustment of all matters now requiring to be adjusted.

4. The assurances which on behalf of the Dominion of Canada have from time to time been given to the Indian Tribes of British Columbia and in particular that of Sir Wilfrid Laurier and those of the present Minister of Interior.

5. The lands and funds held by the Dominion of Canada in trust for the allied Tribes and being the full beneficial property of the allied Tribes.

Therefore the Allied Tribes now formally demand from the Dominion of Canada payment of the sum of one hundred thousand dollars, being the total amount of such expenditure already incurred, and further demand from the Dominion of Canada that full provision be made for paying all additional

funds which hereafter shall be required for such expenditure, as shall be agreed upon between the allied Tribes and the Dominion of Canada or if necessary shall be determined by the Judicial Committee of His Majesty's Privy Council.

Dated at the City of Ottawa the [illegible] June, 1926.

Chairman of Executive Committee of Allied Tribes.

To Honourable CHARLES STEWART,
Superintendent-General of Indian Affairs,
Ottawa.

22. The Government of Canada having definitely agreed as is above shown that the Dominion of Canada will facilitate securing from the Judicial Committee of His Majesty's Privy Council decision of the Indians land controversy, the General Counsel of allied Tribes entered upon discussion with the Minister of Justice regarding the particular method by which the securing of such decision will be facilitated, and offered to suggest for consideration of the Minister of Justice common ground which might be reached by the Government of Canada and the allied Tribes in connection with the carrying forward of the independent judicial proceedings of the allied Tribes.

23. In presenting this Petition to the Parliament of Canada as the Supreme Body representing the Dominion of Canada the allied Tribes declare that, while it is necessary for them to demand what they consider to be their rights from both the Province of British Columbia and the Dominion of Canada and even to contest the validity of an Act of the Parliament of Canada, they desire and intend to act towards all Ministers of the Crown, all Members of both Houses of Parliament and all others concerned in a thoroughly reasonable and conciliatory way and that their one central objective is, by securing judicial decision of all issues involved, to open the way for bringing about an equitable and moderate settlement satisfactory to the Governments as well as to themselves.

Therefore the Petitioners humbly pray:—

1. That by amendment of Chapter 51 of the Statutes of the year 1920 or otherwise the assurance set out in paragraph 11 of this Petition be made effective and the aboriginal rights of the Indian Tribes of British Columbia be safeguarded.

2. That steps be taken for defining and settling between the allied Indian Tribes and the Dominion of Canada all issues requiring to be decided between the Indian Tribes of British Columbia on the one hand and the Government of British Columbia and the Government of Canada on the other hand.

3. That immediate steps be taken for facilitating the independent proceedings of the allied Tribes and enabling them by securing reference of the Petition now in His Majesty's Privy Council and such other independent judicial action as shall be found necessary to secure judgment of the Judicial Committee of His Majesty's Privy Council deciding all issues involved.

4. That this Petition and all related matters be referred to a Special Committee for full consideration.

Dated at the City of Ottawa, the 10th day of June, 1926.

PETER R. KELLY,
Chairman of Executive Committee of Allied Tribes.

MINUTES OF EVIDENCE

COMMITTEE ROOM 368,
WEDNESDAY, March 30, 1927.

The Special Joint Committee appointed to inquire into the claims of the Allied Indian Tribes of British Columbia, as set forth in their petition submitted to Parliament in June, 1926, met at 11 o'clock, a.m., Hon. Hewitt Bostock presiding.

The CHAIRMAN: Gentlemen, we have a quorum of the two Committees present, and I propose that we get down to business. I am sorry that Mr. Hay, the Chairman of the House of Commons Committee, is not able to be here.

I would suggest that before we actually commence the business of the Committees, we should hold a meeting with closed doors, to decide on the course of procedure.

The Committee then met in camera.

The CHAIRMAN: These two committees are sitting together, for the purpose of hearing evidence, and making their report. I understand, the House of Commons Committee have arranged for certain evidence to be presented this morning. It is getting towards the end of the session, and it is a question of how we can arrange this meeting so as to put through the matter in question as quickly as possible. Of course, I must remind the hon. members of the Senate, that the Senate meets now on Friday morning, at eleven o'clock. I do not know just what to suggest.

Hon. Mr. BELCOURT: We are going to be very busy.

The CHAIRMAN: We could probably meet at ten o'clock, if that will suit the gentlemen of the Senate. Would it be possible for us to meet to-morrow morning at ten o'clock.

Hon. Mr. STEWART: Yes, as far as we are concerned.

The CHAIRMAN: The question comes up as to how we are to proceed in this matter. We have present Mr. O'Meara, Dr. Scott, Rev. P. R. Kelly, Andrew Paull, and several other gentlemen.

Hon. Mr. MURPHY: Are those witnesses summonsed for this morning?

The CHAIRMAN: I understand Mr. O'Meara is to appear as counsel. I presume the right way would be to allow the Indians to present their case, first.

Hon. Mr. STEVENS: I have a suggestion I should like to make in that regard; I might say I have been fairly familiar with this controversy ever since Mr. O'Meara took it up in 1910. I think the Committee would get a better grasp of the situation if we had Dr. Scott before us, first, and let him give us the background of the whole business. You will then get, in a short time, a grasp of the general situation. Then, we can have Mr. O'Meara.

Hon. Mr. BELCOURT: What authority has Mr. O'Meara to speak for anybody? If he has no authority, I, for one, do not propose to listen to him.

Hon. Mr. STEVENS: If we heard Dr. Scott, the Committee could then judge how to narrow it down to a proper basis.

Hon. Mr. BENNETT: Dr. Scott has told me the story, and I agree with what Mr. Stevens says.

Hon. Mr. STEWART: We ask that the brief to be presented by Dr. Scott be printed.

Hon. Mr. MURPHY: What about Mr. Stevens' suggestion? Are we not to have Dr. Scott and get to work.

The CHAIRMAN: I understand that is agreeable to the Committee. I understand that Mr. Stevens proposes that Dr. Scott come now, without the other witnesses being present.

Hon. Mr. STEWART: May I say that Mr. O'Meara has been summonsed as a witness. So far as the Department is concerned, there is no objection to his acting as solicitor for the Allied Tribes. I think it is important that he should also appear as a witness, so that he may be questioned.

Hon. Mr. BELCOURT: We cannot prevent him from being here; he will insist upon being here.

Hon. Mr. STEWART: It is a question of whether the Committee can question him.

Hon. Mr. BENNETT: He cannot be asked to disclose any information he has received as solicitor.

Hon. Mr. BELCOURT: He can disclose his authority.

Hon. Mr. MURPHY: If he is here as a witness, the Committee can examine him.

Hon. Mr. BENNETT: Let us get Dr. Scott in.

The CHAIRMAN: Is it your pleasure that Dr. Scott should be heard first?

Hon. MEMBERS: Agreed.

The Committee then resumed in open session.

The CHAIRMAN: We had better have the minutes of the last meeting.

Hon. Mr. BENNETT: It is agreed that the minutes be taken as read and confirmed.

The CHAIRMAN: We have decided, Dr. Scott, that we would like to hear what you have to say, first of all.

Mr. ANDREW PAULL: Hon. Mr. Chairman, may I be allowed to say a word before Dr. Scott proceeds? I am the Secretary of the Executive Committee of the Allied Tribes in British Columbia, and on their behalf, I take this privilege of thanking the Government, and previous Governments, for having arrived at this stage of this troublesome question. Now, the purpose of my arising is to say that I have been instructed to ask that all proceedings before this Committee be reported in book form, and that the Indians be supplied with that record. I also wish to ask if this Committee has invited representatives of the Province of British Columbia to appear before this Committee. If they have refused, we wish to have their refusal recorded in the records.

The CHAIRMAN: At the present time, I understand the Committee has decided to have a record taken of all the proceedings, and to have a certain number of copies printed. These are for the use of the members of the House of Commons, and the Senate. It will be for the Committee, later, to decide whether the record can be used by others as well.

Copies of these telegrams have been handed to me. (Reading):

VICTORIA, B.C., Mar. 17, 1927.

Hon. CHARLES STEWART,
Minister of the Interior,
Ottawa, Ont.

Replying to your wire this date re Indian lands this Government relies on Section 109 of B.N.A. Act and upon paragraphs ten and thirteen of "Terms of Union" and will not be represented before Committee named.

JOHN OLIVER,
Premier.

DEPARTMENT OF THE INTERIOR,
OTTAWA, March 18, 1927.

Honourable JOHN OLIVER,
Premier of British Columbia,
Victoria.

Your wire seventeenth. Note your province will not be represented before Committee of House enquiring into Indian Lands petition.

CHARLES STEWART.

I think that answers Mr. Paull's question.

We will now call on Dr. Scott.

Dr. DUNCAN C. SCOTT: Mr. Chairman and gentlemen, I have prepared a memorandum on the subject, and an historical sketch, giving the different steps that have occurred since this matter came up before the Government many years ago; accompanied by appendices which I think will be of use to the Committee, and informative.

During the course of the memorandum, I express my own views on the subject, perhaps rather emphatically, once in a while.

Hon. Mr. BENNETT: Could you, for the use of the Committee, give us a concise statement to enable us to know what the whole thing is about, in your own words, and as short as possible.

Dr. SCOTT: I have made my memorandum as short as possible, and if I may be permitted to read my memorandum I think it would be more succinct. (Reading):

"REPORT ON THE BRITISH COLUMBIA INDIAN QUESTION

SIR,—I have the honour to submit a memorandum on the relations between the Dominion Government and the Indians of British Columbia. An aboriginal title to the provincial lands has been since Confederation claimed for the Indians of the province, and has been presented in different forms and by various methods to His Majesty's Privy Council, to the Dominion Parliament, and to the Dominion and Provincial Governments. It is not my intention to deal with the legal questions involved, but to present the facts as clearly as possible and to make such recommendations as appear to be appropriate.

No cession of the aboriginal title claimed by the Indians over the lands of the Province of British Columbia has ever been sought or obtained. In this respect, the position is the same as in Nova Scotia, Prince Edward Island, New Brunswick, Quebec, and the Yukon. The total area of the province is approximately 355,855 square miles. Of this area, 104,400 square miles lie within the boundaries of a larger area of 329,400 square miles, covered by an Agreement known as Treaty No. 8, whereby the aboriginal title was ceded to the Crown, and 358 square miles, part of Vancouver island, was ceded by the Indians to James Douglas, Governor of the Hudson's Bay Company. Subtracting these areas from the area of the province, 251,097 square miles remain. The Indians have not ceded any aboriginal title to this part of the province; they claim that the title is theirs, and that they should be compensated therefor.

The statement of the Allied Indian Tribes of British Columbia made to the Provincial Government on the 12th November, 1919, in the pamphlet hereto attached, sets forth fully the claims and nature of the expected compensation for the purchase.

The Proclamation of 1763, which is referred to by the advisers of the British Columbia Indians as a basis of their aboriginal title to the lands of the

province, was issued after the conquest of Canada, to establish His Majesty's government in the newly conquered territory. By subsequent Acts of the Imperial Parliament, the Proclamation was repealed, the courts were set up, and a system of government was gradually developed.

The Proclamation states that it is issued for the purpose of establishing a government in the "extensive and valuable acquisitions in America" secured by the Treaty of Paris. The French made no claim to any portion of the present province of British Columbia. In 1793, thirty years after the date of the Proclamation, Vancouver landed on the island now known by his name, and in 1794 McKenzie made his overland journey to the coast. In 1843 the Hudson's Bay Company established a post on the site of the present city of Victoria, and in 1849 Vancouver was made a Crown colony. British Columbia (the mainland and Queen Charlotte Islands) was made a Crown colony in 1858, and the two colonies were united in 1866. British Columbia entered Confederation on the 20th July, 1871.

The "Terms of the Union" between British Columbia and the Dominion are set forth in the Imperial Order in Council of the 16th May, 1871. The 13th clause of the terms establishes the relations between the two governments and the Indians.

In order to understand the bearing of this clause, it is necessary to state a few of the facts with reference to the entrance of British Columbia into Confederation. The 146th section of the British North America Act provides for the inclusion in the Union of other North American colonies. Amongst those mentioned is British Columbia. Mr. Anthony Musgrave had been appointed Governor of British Columbia for the express purpose of conciliating the different factions in the colony and of promoting its best interests. He was appointed on the 17th June, 1869, and on the 14th August, Earl Granville, the Secretary of State for the Colonies, addressed to him a despatch, No. 84, in the latter part of which he touched upon the Indian question as follows:—

> It will not escape you that in acquainting you with the general views of the Government, I have avoided all matters of detail, on which the wishes of the people and the Legislature will of course be declared in due time. I think it necessary however to observe that the Constitution of British Columbia will oblige the Governor to enter personally upon many questions, as the condition of Indian tribes and the future position of Government servants with which, in the case of a negotiation between two responsible governments, he would not be bound to concern himself.

Preliminaries to Union were actively taken up by both the Colony and the Dominion, and in 1870 we find Governor Musgrave writing to the Governor General of Canada as follows:—

> GOVERNMENT HOUSE,
> British Columbia, 20th February, 1870.
>
> SIR,—I have the honour to forward to Your Excellency a copy of the Message with which I caused the Legislative Council to be opened on the 15th instant, and of a Resolution which the Government will introduce, embodying the terms on which it is proposed to join the Dominion of Canada.
>
> 9. In Lord Granville's despatch, No. 84, of the 14th August, which was communicated to Your Excellency, he mentioned the condition of the Indian Tribes as among some questions upon which the Constitution of British Columbia will oblige the Governor to enter personally. I have, purposely, omitted any reference to this subject in the terms proposed to the Legislative Council. Any arrangement which may be regarded

as proper by Her Majesty's Government, can, I think best be settled by the Secretary of State, or by me, under his direction with the Government of Canada. But 'Indians' and 'Lands reserved for Indians,' form the twenty-fourth of the classes of subjects named in the 71st Section of the Union, which are expressly reserved to the Legislative authority of the Parliament of the Dominion.

I have, etc.,

(Signed) A. MUSGRAVE.

His Excellency, Sir John Young, G.C.B., G.C.M.G., etc.

This explains why we do not find any reference to Indians in the original Union resolutions of the British Columbia Legislature.

The consideration which was given the Indian question resulted in the 13th Clause of the "Terms of Union";

> 13. The charge of the Indians and the trusteeship and management of the lands reserved for their use and benefit, shall be assumed by the Dominion Government, and a policy as liberal as that hitherto pursued by the British Columbia Government, shall be continued by the Dominion Government after the Union. To carry out such policy, tracts of land of such extent, as it has hitherto been the practice of the British Columbia Government to appropriate for that purpose shall from time to time be conveyed by the Local Government to the Dominion Government in trust for the use and benefit of the Indians, on application of the Dominion Government, and in case of disagreement between the two Governments respecting the quantity of such tracts of land to be so granted, the matter shall be referred for the decision of the Secretary of State for the Colonies.

By the Dominion Parliament and the Government of British Columbia this was considered a satisfactory division of responsibility for the Indians, and the Imperial Government acquiesced. The "Terms of the Union" were approved by Order of Her Majesty in Council on the 16th May, 1871.

The Governor of the Colony, acting under the powers of His Commission, the Dominion Government, and the Imperial authorities agreed on Clause 13 of the Terms of the Union, which embodied the Indian policy of the Government of the Colony. That policy was set forth by the Honourable J. W. Trutch in a memorandum to Governor Musgrave, which was transmitted by him to Earl Granville, the Secretary of State for the Colonies, under date of the 29th January, 1870. Mr. Trutch's memorandum, from which the following words are an extract, was prepared to refute the allegations made against the Indian administration of the Colonial Government by Mr. W. S. Green:—

> The Indians have, in fact, been held to be the special wards of the Crown, and in the exercise of this guardianship Government has, in all cases where it has been desirable for the interests of the Indians, set apart such portions of the Crown lands as were deemed proportionate to, and amply sufficient for, the requirements of each tribe; and these Indian Reserves are held by Government, in trust, for the exclusive use and benefit of the Indians resident thereon.
>
> But the title of the Indians in the fee of the public lands, or of any portion thereof, has never been acknowledged by Government, but, on the contrary, is distinctly denied. In no case has any special agreement been made with any of the tribes of the Mainland for the extinction of their claims of possession; but these claims have been held to have been fully satisfied by securing to each tribe, as the progress of the settlement of the country seemed to require, the use of sufficient tracts of land for their wants for agricultural and pastoral purposes.

The Indian policy of the Colonial Government was again referred to by the Honourable Mr. Trutch, after his appointment as first Lieutenant-Governor of the Province, in a letter addressed to Sir John Macdonald on October 14, 1872, of which this is an extract:—

> We have in British Columbia a population of Indians numbering from 40,000 to 50,000, by far the larger portion of whom are utter savages living along the coast, frequently committing murder and robbery among themselves, one tribe upon another, and on white people who go amongst them for purposes of trade, and only restrained from more outrageous crime by being always treated with firmness, and by the consistent enforcement of the law amongst them to which end we have often to call in aid the services of H.M. ships on the station. I cannot see how the charge of these Indians can be entrusted to one having no experience among them nor do I think it likely that the assistance of the Navy would be willingly and effectively given to any subordinate officer of the Government. Without further descanting on the matter however I may tell you that I am of opinion, and that very strongly, that for some time to come at least the general charge and direction of all Indian affairs in B.C. should be vested in the Lt. Governor, if there is no constitutional objection to such arrangement, and that instead of one there should be three Indian Agents, one for Vancouver Island, one for the Northwest Coast and the third for the interior of the mainland of the province, which latter gentleman might very properly be a Roman Catholic as the Indians in this section are for the most part under the influence of missionaries of that persuasion. Then as to Indian policy I am fully satisfied that for the present the wisest course would be to continue the system which has prevailed hitherto only providing increased means for educating the Indians and generally improving their condition moral and physical.
>
> The Canadian system as I understand it will hardly work here. We have never bought out any Indian claims to lands, nor do they expect we should, but we reserve for their use and benefit from time to time tracts of sufficient extent to fulfill all their reasonable requirements for cultivation or grazing. If you now commence to buy out Indian title to the lands of B.C. you would go back of all that has been done here for 30 years past and would be equitably bound to compensate the tribes who inhabited the districts now settled farmed by white people equally with those in the more remote and uncultivated portions. Our Indians are sufficiently satisfied and had better be left alone as far as a new system towards them is concerned only give us the means of educating them by teachers employed directly by the Government as well as by aiding the efforts of the missionaries now working among them.

I have given these extracts to prove the Colonial policy as to the general treatment of the natives and particularly as to the aboriginal title. It should be kept constantly in mind when one is considering this question, the point of view was not altered when provincial status was reached, and it is now as firmly fixed as it ever was.

The harmony between the Governments apparent from this definition of responsibility for Indians was not shared by the Indians themselves. They had complained constantly of the insufficiency of land allotments for reserves, and rather indefinitely as to the necessity for an acknowledgment of the Indian title. From the year 1875 until the present time there has been a definite claim, growing in clearness as years went by, gradually developing into an organized plan, to compel the Provincial and Dominion Governments, either or both, to acknowledge an aboriginal title and to give compensation for it. The record of these actions, which I shall attempt to trace as briefly as possible, will show

the Provincial Government ever constant in the stand that there is no Indian title in the Provincial lands, and the Dominion Government uncertain of its position on that question, but as generous to the Indians of British Columbia as to other Indians, giving them protection and supervision, educating them, relieving evitable suffering and providing for their advancement, extending to them the same policy and system (with the single exception of annuity payments) as prevails in other parts of the country where the Indian title had been ceded and where special treaty obligations required fulfilment.

After the admission of British Columbia into Confederation the Dominion assumed the Indian administration, appointed officials and obtained appropriations from Parliament for Indian purposes, and it was not until 1875 that anything occurred to indicate that the provisions of Clause 13 of the "Terms of Union" were inadequate as a settlement of the Indian question between the interested Governments. The British Columbia Government had passed an Act to amend and consolidate the laws affecting Crown Lands in British Columbia, which was assented to on the 2nd of March, 1874. This Act was recommended to be disallowed by Order of His Excellency in Council of 23rd January, 1875, the main reason being the fact that no cession of the Indian title had been obtained, and the Act was disallowed by Order in Council of 16th March, 1875. It was amended by the Provincial Legislature, and after consultation between the Governments and after a definite procedure had been established to be followed in the selection and allotment of reserves, the Act was allowed to go into operation. (Copies of the documents will be found in Appendix B.)

Hon. Mr. BELCOURT: You speak of disallowance. Was that exercised by the Home government?

Dr. SCOTT: No.

Hon. Mr. BENNETT: No, it is by the Dominion government.

Dr. SCOTT: (Continuing reading):

> It will be observed that the Hon. Edward Blake, then Minister of Justice, under date of 28th April, 1876, reported that:

I have copies of these documents and Orders-in-Council here; they may be added afterwards.

> Although the undersigned cannot concur in the view that the objections taken are entirely removed by the action referred to; and, though he is of opinion that, according to the determination of council upon the previous Crown Lands Act, there remains serious question as to whether the Act now under consideration is within the competence of the provincial legislature, yet since, according to the information of the undersigned, the statute under consideration has been acted upon, and is being acted upon largely in British Columbia, and great inconvenience and confusion might result from its disallowance; and, considering that the condition of the question at issue between the two governments is very much improved since the date of his report, the undersigned is of opinion that it would be the better course to leave the Act to its operation.
>
> It is to be observed that this procedure neither expresses nor impliedly waives any right of the government of Canada to insist that any of the provisions of the Act are beyond the competence of the Local Legislature, and are consequently inoperative.
>
> The action referred to is represented by the Orders in Council of the Dominion and the Province providing for the appointment of a Joint Commission to allot Indian reserves. *(See Appendix C).*

After the weighty language of the Memorandum to Council of 18th January, 1875, the final action seems inconsequent. It would hardly be possible to draft a stronger document in support of the claim for an aboriginal title than this memorandum. Its force is somewhat lessened by the remark 'that the policy of obtaining surrenders at this lapse of time and under the altered circumstances of the province, may be questionable, yet the undersigned feels it his duty to assert such legal or equitable claim as may be found to exist on the part of the Indians. But the antithesis is striking; on the one hand a statement of great import: 'The undersigned feels that he cannot do otherwise than advise that the Act in question is objectionable, as tending to deal with lands which are assumed to be the absolute property of the province, an assumption which completely ignores, as applicable to the Indians of British Columbia, the honour and good faith with which the Crown has, in all other cases, since its sovereignty of the territories in North America, dealt with their various Indian tribes.' And on the other hand, the virtual acceptance of the Thirteenth Clause of the "Terms of Union" as an adequate settlement of the Indian Claims.

I hope the committee finds all this useful, and that I am not going too much into detail. This is the way the administration is carried on (Continuing reading):

In order to present a clear view of action subsequent to the agreement between the Governments as to the best method of carrying out the provisions of the Thirteenth Clause, it is, I think, necessary to separate the facts into two main divisions: (1) the administration by the Dominion Government of Indian Affairs in British Columbia; (2) the presentation of the aboriginal claim of the Indians.

When once the governments had appointed the Commission to select reserves, the action proceeded, and lands were set apart for the use of the Indians, at first by a Joint Commission, and later by a single Dominion Commissioner, the last being Mr. A. W. Powell who retired on 31st March, 1911.

In 1912 the Dominion Government decided to approach the government of British Columbia and endeavour to obtain a settlement of the Indian question, and by Order in Council of 24th May, 1912, Mr. J. A. J. McKenna was appointed a Commissioner 'to investigate claims put forth by and on behalf of the Indians of British Columbia, as to lands and rights, and all questions at issue between the Dominion and Provincial governments and the Indians in respect thereto, and to represent the government of Canada in negotiating with the government of British Columbia a settlement of such questions.'

The claim for aboriginal title came within the scope of his commission, but the Prime Minister of British Columbia refused to discuss the question.

Hon. Mr. STEVENS: The provincial government refused to discuss the aboriginal title?

Dr. SCOTT: Yes.

Hon. Mr. STEVENS: But not the other?

Dr. SCOTT: No, they went on, as I will show. Mr. McKenna made an exhaustive memorandum to Sir Richard on that subject, and endeavoured to get him to consent to that, but he would not. His report is as follows; under date of 29th July, 1912:

Adverting to our conversations, let me say that I understand that the claims made on behalf of the Indians are:—(1) That the various nations

or tribes have aborignal title to certain territories within the province, which, to perfect the Crown title in the right of the province, should be extinguished by treaty providing for compensation for such extinguishment;

As to the first claim, I understand that you will not deviate from the positon which you have so clearly taken and frequently defined, i.e., that the province's title to its land is unburdened by any Indian title, and that your government will not be a party, directly or indirectly, to a reference to the Courts of the claim set up. You take it that the public interest, which must be regarded as paramount, would be injuriously affected by such reference in that it would throw doubt upon the validity of titles to land in the province. As stated at our conversations, I agree with you as to the seriousness of now raising the question, and, as far as the present negotiations go, it is dropped.

Mr. McKenna then directed his efforts to negotiating for the abandonment by the Province of the claim to a reversionary interest in the Indian Reserves. In his interim report on his mission, dated 26th October, 1912, Mr. McKenna states that:—

During intervals in the negotiations he visited different parts of the province and met many representative Indians. His investigations confirmed the opinion, which he had formed from a study of the records, that the great source of Indian disaffection was the provincial interest in lands reserved for Indians, recognized by the joint agreement of 1875-6, and, as the country developed and Indian reserves in certain districts increased enormously in value, asserted more clearly and largely by the province through legislative acts and otherwise. That agreement was the outcome of discussion respecting Article Thirteen of the "Terms of Union" which determines the respective obligations of the Dominion and the province as to the Indians of British Columbia. The position taken by the province was that the title of Indians to lands reserved for them was a mere right of use and occupancy; that under said Article no beneficial interest in such lands was to be taken by the Dominion as guardian of the Indians; and that, whenever the Indian Right to any such lands or to any portion or portions thereof became extinguished through surrender or cessation of use or occupation, or diminishment of numbers, the land reverted, unburdened, to the province. The Indians as they advanced in knowledge, became aware that they were not regarded as having the same right in reserved lands as Indians in other parts of Canada were recognized as having in lands set apart for them; and without clearly understanding the situation, became in the measure of their advancement disaffected by the consequences of the unsatisfactory nature of the Dominion's tenure of their reserves. The undersigned, therefore, concentrated his efforts to the extinction of the interest in reserves claimed by the province, and to securing for the Indians of British Columbia lands by the same title as that under which lands are held by the Dominion for Indians in the other parts of Canada.

The result of the negotiations between Sir Richard McBride and Mr. McKenna was the appointment of a Royal Commission to adjust the acreage of Indian Reserves in British Columbia, and to set apart new lands for reserves. The reserves finally fixed by the Commissioners were to be conveyed by the province to the Dominion free of any provincial reversionary interest therein. There were other provisions of the agreement, unimportant to this report. The Commission was appointed on March 31, 1913, and dissolved on June 30, 1916, having made a voluminous report. The governments obtained statutory authority

to accept the report, and after a final revision by officers of both governments, assisted by representatives of the Indians, the report was confirmed by Orders in Council of both governments, by British Columbia on July 26, 1923, and by the Dominion on July 19, 1924. This is a final adjustment of all Indian questions between the Dominion and the Province and therefore excludes the possibility of reference to the Secretary of State for the Colonies.

Upon this point it might be well here to quote the answer given by the Honourable Mr. Justice Newcombe, who was then Deputy Minister of Justice, to a question asked the government by the Indians. The question was: "The effect of the McKenna-McBride Agreement and in particular the words 'final adjustment of all matters relating to Indian affairs in the Province of British Columbia.'" The answer was: "I am of opinion that as between the two Governments the agreement and the action of the Commissioners thereunder, if approved by both Governments, operate as a final adjustment of all matters relating to Indian affairs in the Province of British Columbia. These are the words of the agreement, and would I should think be interpreted to exclude claims by either government for better or additional terms."

During the years after British Columbia came into Confederation, and while the Dominion Government was active in obtaining reserves for the Indians, it was also extending to them the benefits of an Indian policy that obtained generally east of the mountains in regions where there had been a cession of the Indian title. The special mark of a treaty with Indians is the payment of annuity. This has been absent in British Columbia, but in all other respects like expenditures arising from similar motives will be found in all the provinces. There has been no discrimination against the Indians of British Columbia. As their needs became apparent, they have been satisfied and the Dominion Parliament has granted this Department funds to develop a progressive policy. (In Appendix D will be found a schedule of the expenditure aggregating $10,800,300.37 since Confederation.) It is clear that the guardianship of the Indians of British Columbia by the Dominion has been conducted with the same care, governed by the same principles as the general trust, and that the non-recognition of an aboriginal title has not prejudicially affected the interests of these Indians.

Hon. Mr. BENNETT: Is that ten million dollars without interest?

Dr. SCOTT: Yes.

Hon. Mr. BENNETT: The ordinary year to year expenditure?

Dr. SCOTT: Yes, the ordinary grants. Nearly eleven million dollars.

Hon. Mr. STEVENS: In how long a period?

Dr. SCOTT: Since Confederation.

Hon. Mr. BELCOURT: What is the proportion of that as compared with the other provinces?

Dr. SCOTT: I did not work that out, Senator Belcourt, but it might be readily worked out.

Then I deal with the presentation of the aboriginal claim.

It is perhaps unimportant to note each incident of the many which have led up to the present position of this question. However, it is well at the outset to note the statement made by Lord Dufferin, when he was Governor General of Canada, in a speech in the city of Victoria in September, 1876. His Excellency strongly supported the advisability of recognition of an aboriginal title in the provincial lands.

It was not until about ten years after that date that there was any active discussion as between the Indians and the Government of British Columbia. This agitation amongst the Indians led to the visit to England of three important Indian Chiefs in the year 1906, the purpose being to lay their grievances

before His Majesty King Edward VII. It was not until 1909 that an organization or society was formed for the purpose of promoting the claim. In the spring of 1909 a petition was presented to His Majesty, which was afterwards referred to the Government of Canada. Sir Wilfrid Laurier visited British Columbia in the summer of 1910, and at Prince Rupert met a deputation of Indians of the surrounding country, and he also met Indians at Kamloops, and received communication of their claims and opinions on the subject of Indian title. In December, 1910, a deputation from the Friends of the Indians waited upon Sir Richard McBride, the Prime Minister of British Columbia, and presented their claim, and in March of the next year a large number of Indians again waited upon the British Columbia government, and upon both these occasions Sir Richard McBride informed them that in the opinion of his Government, the Indians had no title to the public lands of the province. Consideration by the Dominion Government of the petition of 1909, referred to above, led to a decision to prepare a stated case for the Courts, and a case was actually framed containing ten questions, the first three of which related to the general matter of Indian title, but when this plan was presented to the Government of the Province, they objected to the preliminary clauses and would not consent to the reference.

It is clear that the Dominion Government was sympathetic with the Indian claim and with the desire of the Indians to have a judicial decision thereon. This is evident from Sir Wilfrid Laurier's remarks to a deputation which waited on him at Ottawa on the 26th April, 1911:—

> The matter for us to immediately consider is whether we can bring the Government of British Columbia into Court with us. We think it is our duty to have the matter enquired into. The Government of British Columbia may be right or wrong in their assertion that the Indians have no claim whatever. Courts of Law are just for that purpose—where a man asserts a claim and it is denied by another. But we do not know if we can force a Government into Court. If we can find a way I may say we shall surely do so, because everybody will agree it is a matter of good government to have no one resting under a grievance. The Indians will continue to believe they have a grievance until it has been settled by the Court that they have a claim, or that they have no claim.

In the previous year the Dominion Government, at the Session of 1910, had passed legislation, Clause 37A of the Indian Act, to enable the Government to bring the case before the Courts, and this first amendment to the statute having been found to be not quite broad enough, the Act was further amended at the Session of 1911, and all with the express purpose of having a judicial decision on the case despite the refusal of British Columbia to consent to the stated case. After this amendment became law, the Law Officers of the Crown gave further consideration as to how the case might be dealt with, and it resulted in the passage of an Order of His Excellency in Council of the 17th May, 1911, a copy of which will be found in Appendix E. The policy of the Government as then expressed was " to institute proceedings in the Exchequer Court of Canada on behalf of the Indians against a provincial grantee, or licensee, in the hope of obtaining a decision upon the questions involved as soon as a case arised in which the main points in difference can be properly or conveniently tried." Mr. Newcombe drew the attention of the Department to this Order in Council on the 18th April, 1912. It will be observed that the Memorandum to Council was drafted by the Department of Justice and it would appear that this Department was not advised of its passage, and was, therefore, ignorant of it until the above date, namely 18th April, 1912, when a certified copy was obtained for our papers.

Hon. Mr. BENNETT: Do you say that is the Department of the Interior?

Dr. Scott: The Department of Justice.

Hon. Mr. Bennett: How do they say it was drafted by the Department of Justice, and that their attention was not directed to it?

Dr. Scott: That is the fact.

Hon. Mr. Bennett: But it is a reflection on their own Department.

Dr. Scott: Well, I do not want to reflect on their Department.

Hon. Mr. Bennett: But they are themselves reflecting on their own Department.

Dr. Scott: At that time the Department of Justice had charge of the case, and were really dealing with it. I cite these facts to show that the government of that date at least was trying to get the case before the Courts.

It will be remembered that the Government changed in the autumn of 1911, and Sir Robert Borden's Government came into power. While the Order in Council of the 17th May, 1911, was dormant, Mr. McKenna had recommended that there should be discussions anew with the Provincial Government, and as previously stated, he was appointed a special Commissioner on the 24th May, 1912, the appointment of a Royal Commission followed, and subsequently the confirmation of their Report by the Governments. These incidents have been dealt with in the previous pages of this memorandum.

Hon. Mr. Belcourt: All that preceded the Royal Commission of 1912, and really led up to the Royal Commission.

Dr. Scott: Yes. It is claimed that Sir Wilfrid Laurier's government was willing to take the case to the Courts. They amended the Indian Act twice to enable them to do it, and even then they found they had not succeeded, and then they passed that Order in Council saying that when they could take a case against a provincial grantee, that was perfectly clear, they would put the matter into the Courts. (Continuing reading):

> The undersigned was appointed Deputy Superintendent General on October 11, 1913, and was almost immediately confronted with this question. The government had accepted the agreement arrived at by Sir Richard McBride and Mr. McKenna by Order in Council of the 27th November, 1912. The Royal Commission had been appointed and was in the field, but the advisers of the Indians were still pressing for action on the question of aboriginal title. The Nishga Tribe, inhabiting the Nass River country, had presented a petition to His Majesty's Privy Council in May of 1913, which had been referred to the Dominion Government on the 19th June, 1913. In reviewing the previous action of the Government I could not discover—

I am speaking of myself as the then Deputy of the Department. (Continuing reading):

> —that the expenditure by the Dominion Government on behalf of the British Columbia Indians, growing year by year since Confederation, had ever been compared with the probable value to the Crown of the Indian title in British Columbia estimated upon a comparison with appraised values as shown by existing treaties in other provinces. A few interviews with the advisers of the Indians convinced me that they were in possession of erroneous ideas about the nature of the Indian title and exaggerated views of the value of the title, and had in fact not fully grasped the conditions under which the Crown had made treaties with the Indians in other parts of the Dominion. I became convinced that the expectation of receiving compensation of very large value either in money or privileges was influencing to a great extent the strength of the pressure being brought to bear on the Government, and I found the

idea prevailing that the improvements made by white citizens to provincial lands, both in city and country, had enhanced the value of the Indian title. As it is clear that this is not the case, and as I believed that the Indians were already receiving in value what might be considered adequate compensation for the title, it occurred to me to recommend to the Government the proposal which was contained in my memorandum of the 11th March, 1914. The points were carefully considered by the Government. I had the privilege of consultation with the Honourable Mr. Justice Newcombe, who was then Deputy Minister of Justice, and with the Right Honourable the Prime Minister, Sir Robert Borden, and my memorandum was approved of, and accepted by Order in Council of 20th June, 1914. (A copy of this Order in Council, with memorandum attached, will be found in Appendix F.)

Hon. Mr. BENNETT: How long would that be? Perhaps you might read it.

Dr. SCOTT: I have a précis of it here. I think this will give the committee what they require.

Hon. Mr. BENNETT: The substance of it?

Dr. SCOTT: Yes. The proposal was to refer the claim to the Exchequer Court of Canada when the Indians agreed to accept the findings of the Royal Commission on the reserve question and to accept "benefits to be granted for the extinguishment of title in accordance with the past usages of the Crown." That is, if they won this case in the Exchequer Court, they were to accept like benefits to what had been accorded to Indians in other parts of the country.

Hon. Mr. BENNETT: Did the Indians claim that they had not received in proportion to the other provinces?

Dr. SCOTT: Oh, yes, that is the claim to-day. I do not know that they say they have received nothing for the title, but they want a cession of this title on their own terms, which you will find in one of their pamphlets. If and when the matter is printed, the committee will read my argument in this memorandum;—has been somewhat criticized and perhaps I might amend it a little now at this date. At any rate, those are my views and I think they are perfectly sound on the subject of Indian title and of the compensation that has been accorded in the past.

By this plan the arrangement between British Columbia and the Dominion, established by Clause Thirteen of the Terms of Union, was to be respected, and the Dominion was to grant any additional compensation on the same scale as had been adopted in the past. A form of agreement with the Indians was prepared, but was never presented. The plan became generally known to their advisers and to the chief members of their organization, but no definite action was taken. Naturally, they never approved of it, as it was virtually a denial of the extravagant expectations which had been aroused.

Early in the month of February, 1915, the undersigned had lengthy conversations with a deputation of the Nishga Indians (Nass River), who had come to Ottawa to consult with the Government. The Nishga petition is frequently referred to in the statements of the Indians, and the fiction is maintained that this petition is still before the Privy Council, and only methods of procedure remain undetermined. The fact is that the Canadian solicitor for the Nishga Indians was advised that if the petition was to be considered by the Privy Council, the matter must be litigated in the Canadian Courts. In Appendix G will be found a letter from Sir Almeric Fitzroy and an extract from a letter from the Honourable C. J. Doherty. In this Appendix will be also found a letter from the Secretary of His Royal Highness the Duke of Connaught, to which reference is frequently made, and also a letter from the Secretary of the Duke of Devonshire, both Governor Generals of the Dominion.

At the Session of Parliament of 1919-20 the Department had presented legislation in the form of two bills: one to amend the Indian Act, and another to enable the Dominion to deal with the Report of the Royal Commission. A special committee of the House was formed to consider the first-mentioned bill, and the solicitor for the British Columbia Indians appeared before the committee and presented their claims. When these bills were in the Senate, he and a deputation of British Columbia Indians appeared before a Senate committee and again presented their claims.

The Government of the Right Honourable Mackenzie King came into power in December, 1921, and soon after the appointment of the Honourable Charles Stewart as Superintendent General of Indian Affairs he began to give personal attention to this case. He visited Vancouver and met the Indians in the summer of 1922, and he met them again in the same place in the summer of the next year. This last meeting was preliminary to a conference which I held with the executive of the Allied Tribes and their solicitor at Victoria. Mr. Stewart had hoped that it would be possible to settle the claim for aboriginal title out of Court, if the Indians would fix upon reasonable compensation which the Dominion Government might supply without involving the Government of the Provinces. The conference which I had with them in August of 1923 was held with the hope of coming to some conclusion. I reported the result of the conference on October 29, 1923. The Indians' demands at that time were practically the same as they are to-day, and were based on the claims advanced in 1919. The only entirely new item was the plea for a cash payment, which was, I understand, made on behalf of the Indians now living who as the Chairman, Mr. Kelly, stated "will not be in a position to profit by any of the future benefits that we have claimed." (In Appendix H will be found a copy of my report to the Minister of October 29, 1923.)

The Executive of the Allied Indian Tribes of British Columbia and their solicitor are pressing the Government for a decision, and have requested that they be allowed to litigate their claim in the Courts and appeal to the Privy Council, the Government to bear all the expenses of the proceedings.

Now I have some general remarks which will not take long to read. Perhaps the committee might like to hear them?

Hon. Mr. STEVENS: Yes.

The CHAIRMAN: Proceed.

Dr. SCOTT (Reading): The undersigned is still of opinion that the Indians are fairly compensated for the aboriginal title by the provision of reserves, and by the extension to the Indians of British Columbia of the policy which obtains in the other provinces of the Dominion. The Indians of British Columbia are not suffering any greater disabilities nor restrictions in hunting and fishing, and in the use of unoccupied territory than are other Indians of the Dominion.

If the Dominion decides to take the case to the Courts and finds that it is possible to do so in consideration of the Thirteenth Clause of the Terms of Union and of the McKenna-McBride agreement and the statutes, the claim will be against the British Columbia Government. If the Indians win, there will be a cloud on all the land titles issued by the province, and this point has always been an obstacle in the way of the reference. As early as the Order-in-Council of 1875 the policy of obtaining a cession was held to be questionable. During one conference between Sir Richard McBride and Mr. McKenna, the Prime Minister held that the public interest was paramount, and the question was dropped owing to the seriousness of then raising that question. The seriousness and importance of that aspect has not lessened, and it is now as much a question of public policy as of Indian interest. It may be even more questionable in view of the statute and the Orders-in-Council confirming the findings of the Royal Commission. The Honourable Mr. Justice Newcombe has stated

that this action constitutes a final settlement of all Indian questions as between the Dominion and the province, and the Dominion Order in Council confirming the McKenna-McBride agreement was passed with the knowledge of that opinion.

It will be interesting to analyze the terms of an existing treaty with the Indians. An examination of our expenditure for Treaty No. 6, which covers Saskatchewan, the terms of which are the same as those of Treaty No. 8, which includes part of British Columbia (104,400 square miles) discloses the fact that the Dominion is spending large sums annually in the erection and maintenance of residential schools, in supervision and instruction in agricultural operations and stock-raising, in medical attendance, medicines and hospitals, in the care of insane Indians. These expenditures and others do not arise from obligations imposed on the Dominion by the treaty with the Indians, but are for the most part actuated by humane motives and by a desire to raise the natives of the country to full citizenship. The law provides for their acceptance as citizens, and the policy is intended to fit them for that condition. A strict fulfilment of the stipulations of the treaty alone would never advance them to that state.

This I think is rather a valuable part of this memorandum, if I may say so.

An examination of treaties and surrenders arranged with Indians since the eighteenth century would prove that the compensation for the title was regulated, and that any demands beyond those thought reasonable by the Crown were refused. The consideration offered and accepted was fair, but it was settled by the Crown, and in fact was often fixed for the Crown's officers before the negotiations. The appraised value of the title in British Columbia is shown by the fact that Sir James Douglas, when he was the Agent of the Hudson's Bay Company on Vancouver Island, paid the Indians at the rate of £2.10.0 per family for the southern one hundred square miles of Vancouver Island. He asked the Imperial authorities for a loan of £3,000 (say $15,000) to obtain a cession of the remaining area of the Island at the rate of £3 per family. If we allow an average of four in a family for the present population of British Columbia (23,792), the cash value of the title to the whole of the unsurrendered area is $89,175.00. If we take Sir James Douglas' report for a loan of £3,000 and use the area of the Island, 16,000 square miles, as a factor, we find that he was contemplating a complete surrender for less than $1.00 a square mile. On this basis the cash value of the title would be $251,097.00 as the unsurrendered portion of the province is 251,097 square miles.

The following is an analysis of the mutual obligations arising from Treaty No. 6. Area ceded: 128,800 square miles.

The Indians Promised:

(1) To observe treaty.
(2) To conduct and behave themselves as good and loyal subjects.
(3) To obey and abide by the law.
(4) To maintain peace and good order.
(5) Not to molest person or property of inhabitants or property of the government or interfere with or trouble travellers.

Obligations Assumed by the Government:

Reserves not to exceed one square mile to each family of five.

Indians to have the right to hunt and fish throughout the tract surrendered.

Expenditure Once for All:

Gratuity at time of Treaty:—$12 per head.

Miscellaneous expenditure in agriculture; tools, cattle, flags, medals, etc., including special provisions for the Indians at Fort Carlton and Fort Pitt when adhering to the Treaty, $110,000.

Perpetual Expenditure:

Annuities: Chiefs, $25.

Headmen (Not to exceed four to each band), $15.

Indians, $5.

Total payment in 1924, $41,290. Government to maintain schools on reserve. $1,500 to be expended annually for ammunition and twine. In the event of pestilence or a general famine among the Indians such subsistence shall be granted as the Chief Superintendent of Indian Affairs may deem necessary.

A medicine chest shall be kept at the house of each Indian Agent for the use and benefit of the Indians, at the discretion of such Agent.

Each chief and headman receives a suitable suit of clothing triennially.

It will be seen that the perpetual expenditure in Treaty No. 6 amounts to about $43,000 per annum under the terms of the treaty. That is all that the government was obligated to spend.

Hon. Mr. BENNETT: How many Indians were under Treaty Number six?

Dr. SCOTT: I have not the number here, but I think it was about 4,000.

Hon. Mr. BENNETT: That is in Saskatchewan.

Dr. SCOTT: Yes. The cost of the medicine chest and the triennial clothing is negligible, and the contingency regarding pestilence and famine has never arisen.

I want the committee to note this comparison. We find for the fiscal year 1924-25, that over and above the Treaty obligations, our total expenditure for general purposes has been $121,013.28 and for education $317,619.

Hon. Mr. STEVENS: That is for the whole locality?

Dr. SCOTT: No, for Treaty Number six alone.

Hon. Mr. MURPHY: There was no obligation to pay either of these sums.

Dr. SCOTT: No, no obligation whatever. What we were obligated to pay was $43,000 a year. What we did pay was that amount, and in addition to that, $121,000 plus $317,000. That is, $439,000.

Hon. Mr. BELCOURT: Was there an actual cession of the land comprised within Treaty Number six, within that area at the time?

Dr. SCOTT: Yes.

Hon. Mr. BELCOURT: There was a surrender?

Dr. SCOTT: Yes, there was a cession.

Hon. Mr. STEVENS: That takes in the northeast corner of about one-quarter of British Columbia; that portion of British Columbia lying east of the main range.

Hon. Mr. BELCOURT: No, that is Number eight. Was Number six surrendered at the time?

Dr. SCOTT: Yes.

Hon. Mr. BELCOURT: But they want the matter reopened. The question here for us is whether we should allow them to reopen the matter so far as this area is concerned, under Treaties Number six and eight.

Dr. SCOTT: Oh, no, not six. I am simply using that as a comparison, showing what the Crown appraise the value of this title to be. What I want to make clear to the committee is that before a Commission went out to arrange a treaty with the Indians, the Commissioners were given directions; that is, the Crown decided what should be paid for this title. An Order in Council was sometimes passed. But sometimes the instructions were merely written. When I made what is called Treaty Number nine for the northern part of Ontario, just before the transcontinental road went through there, it was by pre-arrangement between the Ontario government and the Dominion government. An agree-

ment was made and signed by both governments, and under these orders that is all we were enabled to give the Indians.

We were to offer them reserves, and $4 a head annuity, and schools. I could not have gone beyond my instructions.

The obligations assumed by the Government, were practically the same; the Indians were to get 160 acres of land per head. The expenditure amounted to $150,592, as being once for all. What I mean by "once for all," is that it was a cash payment, and the Indians were to be given a certain number of axes, hoes and cattle—once for all.

The following is an analysis of the mutual obligations arising from Treaty No. 8.

Area ceded: 324,900 square miles.

The Indians Promised:

To observe treaty.

To conduct themselves as loyal subjects.

To obey and abide by the law; maintain peace and assist Government officers to bring Indian offenders to justice.

To agree to Government's power of expropriation on reserves upon payment of just compensation and agree to Government's right of dealing with settlers who may be within limits of reserve and also agree to the Government's right to sell for the Indians' benefit any reserves, provided the consent of the Indians is first obtained.

Obligations Assumed by the Government:

Reserves or land in severalty; 160 acres per Indian.

Expenditure once for All:

Gratuity at time of treaty	$ 43,960
Miscellaneous expenditure: tools, cattle, flags, medals, etc.	106,632
Total	$150,592

Perpetual Expenditure:

Annuities: Chiefs, $25; Headmen, $15, Indians, $5. Total payment in 1924, $26,895.

Salaries of teachers as Government may deem advisable.

Chiefs and headmen get suitable suit of clothes trienially.

Families preferring to continue hunting and fishing receive ammunition and twine to the value of $1 per head annually.

It will be seen that the perpetual expenditure in Treaty No. 8 amounts to between $27,000 and $30,000 per annum under the terms of the treaty. We find for the last fiscal year, 1924-25, over and above treaty obligations, our total expenditure for general purposes has been $95,914, and for education $63,574.

To emphasize the point of the comparative figures just given the matter may be reduced to a statement:

	Square Miles	Perpetual Expenditure Guaranteed by Treaty
Treaty No. 6	128,800	$43,000 00
Treaty No. 8	324,900	30,000 00
	453,700	$73,000 00

		Total Expenditure, British Columbia Indians, 1925-26
British Columbia	251,097	$690,683 14

The Indian expenditure in the Province of British Columbia, where no treaty exists, has been generous. The average expenditure for the fiscal years from April 1, 1923, to March 31, 1926, has been $715,292.40, and the Main Estimates for the current fiscal year allow $892,000 for Indian purposes in British Columbia.

Hon. Mr. BELCOURT: If this comparison which I have is taken from the West, does it hold good throughout the rest of Canada, with regard to the Indians?

Dr. SCOTT: I do not think our expenditure is so large, per capita, east of Lake Superior, because we had not to face the problem of supporting the Indians. In Ontario the Indians are practically self-supporting. In the country north of the Great Lakes, there are still Indians who can be classed as hunters and fishers. After the buffalo disappeared in 1878-79 it was necessary for the Government to interpose, and practically feed the Indians on the plains. They were hunters, for a number of years, and then became agriculturists. I am sure they are now practically self-supporting. The actual outlay to prevent destitution or suffering in the central parts of the prairies is almost nil, but that obligation begins to press very severely upon us in regard to the hunting Indians because as the hunting disappears, and the competition of independent white hunters takes place, with all sorts of restrictive regulations to prevent the disappearance of game, the Indians are gradually being thrown on the government for support.

Hon. Mr. BELCOURT: That is outside the Province of British Columbia?

Dr. SCOTT: Yes.

Hon. Mr. BELCOURT: Do you anticipate the same result, in the more or less distant future, as far as British Columbia itself is concerned? Is hunting going to disappear?

Dr. SCOTT: The hunting is disappearing, yes. The Indians who hunt, in British Columbia, are under great disabilities owing to the hunting restrictions by the provincial authorities, in regard to the settlement undertaken in respect of the preservation of game, timber and fishing. We can have some valuable information on the question of fishing, from Mr. Found, the Commissioner of Fisheries. It is very striking, the part the Indians of British Columbia take in the fishing industry of the province.

Hon. Mr. BENNETT: You see them at it in the canneries.

Dr. SCOTT (Reading):

> The important question to be decided by the Dominion Government, guardian of the Indians, is whether the claim of aboriginal title is to be referred to the Courts, and if not, what course is to be adopted in the future treatment of the question, and what motive or policy is to prevail in our future relationship with our wards. It is our duty to consider what advantage is to be gained by the Indians from this reference. If successful, will their position in British Columbia be improved, or will any advantage follow, financial or otherwise? Or will all that is favourable in their relations with the British Columbia government be jeopardized? We must, I think, consider the effect of a reference to the Courts by the Dominion Government upon the confirmed agreement between the Governments. If that agreement is impaired or destroyed, the allotment of the reserves now secured may depend upon favourable intervention at some future time by the Secretary of State for the Colonies. Is the Dominion Government debarred by the final settlement of all differences between the Governments respecting Indian lands and Indian affairs generally in the province from referring the question to the Courts? These are questions which the Committee will have to consider, and the

[Mr. Duncan C. Scott.]

undersigned has endeavoured to assist their deliberations by setting forth the historical facts, by giving statistics to show the value of Indian title as appraised by past agreements, and to make plain the policy of the Government which leads to expenditure much larger than treaty obligations would warrant, undertaken for the gradual civilization of the Indian and his advancement to full citizenship. The consideration of the questions above set out will naturally give rise to a review of the present Indian policy of the Dominion Government in British Columbia. It will be found not to differ in any respect from the general policy, and the British Columbia Indians will appear as recipients of like benefits to other Indians. The special mark of a treaty with Indians is the payment of annuity. In British Columbia this is absent; it is a questionable benefit, and was only resorted to as a method of giving individual Indians equal compensation. If the Committee will make a comparison between the character and condition of the British Columbia Indians as described by Honourable Mr. Trutch in 1872 and the Indians who have appeared before the Government urging their claims, the result will be striking. Mr. Trutch states that "by far the larger proportion of them are utter savages"; the deputations of the present day have been headed by an Indian who is a Minister of the United Church. His companions speak and write English and are self-supporting members of society. These representatives are no doubt in advance of the Indians generally, but they speak for their people and supply them with ideas. This contrast arises as a result of civilization working upon the natural intelligence of the race; it can be employed most usefully in comparing the treaty terms of the past with the claims set up by these progressive and educated Indians.

The value to the Crown of the Indian title has not been increased by the settlement of the Province and the development of its natural resources, or by the present needs of the natives, but the Indian, possessed of the idea that he has aboriginal title, feeling the pressure of competition and of disabilities which are not peculiar to his environment in British Columbia, has magnified the value and has brought into the settlement of the problem factors which are foreign to it. In other words the Government is dealing with educated and progressive Indians instead of with a primitive people.

As it is clear that the Dominion Government assumed certain responsibilities under the Thirteenth Clause of the Terms of Union, and while at that time the British Columbia Government had no very well developed policy, yet they had established or were thinking of establishing schools for the Indians and were looking forward to a time when they would become self-supporting members of the community. It is fair to say that the Dominion Government has carried on and developed that incipient policy. This is apparent particularly in the item of Indian education, and as that is placed by the Indians themselves in the forefront of their requirements, it is interesting to note that the Department is gradually developing a system of Indian schools which when completed may be found to meet all the reasonable needs of the case. A complete building program totalling $1,310,000 would suffice to establish all necessary Indian schools within the province. When it is completed the annual maintenance would cost $468,000, and 4,415 Indians will be under training. If, in addition to this, a careful administration is maintained, and if instruction is provided in agriculture and fruit-growing in districts where it is applicable, and if the present medical supervision and hospital treatment is gradually improved, it appears to the undersigned that the needs of the British Columbia Indians will be provided for, and by such an

expenditure not only would the supposed Indian title be amply satisfied, but the obligation which the Dominion undertook at the time British Columbia came into the Union will be met most fully and comprehensively.

All of which is respectfully submitted.

DUNCAN C. SCOTT,
Deputy Superintendent General of Indian Affairs.

OTTAWA, March 30, 1927.

Hon. Mr. STEVENS: How many Indians are there in British Columbia?

Dr. SCOTT: About 23,000.

Hon. Mr. BELCOURT: I should like Dr. Scott to read to us that part, he read a little while ago, which mentions the subjects which have been specifically referred to us for investigation.

Dr. SCOTT:

> The important question to be decided by the Dominion Government, guardian of the Indians, is whether the claim of aboriginal title is to be referred to the courts, and if not, what course is to be adopted in the future treatment of the question, and what motive or policy is to prevail in our future relationship with our wards.

The petition asks for reference to the courts.

As far as my opinions of this question are concerned, which I expressed rather freely, I have been expressing them to the Indians just as freely, for the last ten years. As a matter of fact, there is nothing new in it; in giving those opinions, they will not be new to the Indians.

Hon. Mr. BENNETT: If the court were to decide in favour of their title do you believe that would be a settlement of the claims which would arise?

Dr. SCOTT: If it were left to the Province of British Columbia to settle the claims, we all know it is their opinion that there is no claim. And if the courts said, "Yes, there is a claim, British Columbia ought to give you one dollar an acre for the title," we know what the reply of British Columbia would be.

Hon. Mr. BELCOURT: How can this committee recommend a course of action that would bring about a settlement, if the Province of British Columbia, which is a necessary party, refuses to deal with the subject at all? Are not our hands tied?

Hon. Mr. STEVENS: Did I correctly gather, from your memorandum, that prior to Confederation, British Columbia, as a colony, had dealt with the Indian question in a manner which they thought was satisfactory; what appeared to be a definite settlement.

Dr. SCOTT: I think so.

Hon. Mr. BENNETT: And then, when British Columbia entered Confederation, the Dominion Government's duty consisted only in looking after the interests of the Indians, under section 13, of the Terms of the Union?

Dr. SCOTT: Their obligation went far beyond that.

Hon. Mr. BENNETT: Later on, agitation and dispute having arisen, the Dominion and Provincial Governments came to an agreement, and the Royal Commission of 1912 ratified the agreement. In 1923-24, Parliament brought about what the two governments assumed to be a final settlement of the question in dispute.

Dr. SCOTT: Yes. And Mr. Newcombe gave it as his opinion that it was a settlement.

Hon. Mr. STEVENS: Through all those years, the Indians still persisted in claiming aboriginal title to the land.

Dr. SCOTT: Yes.

Hon. Mr. STEVENS: That is really the main question that is outstanding, as far as the Indians are concerned.

Dr. SCOTT: I think so.

Hon. Mr. STEVENS: But not as far as the Provincial and Dominion governments are concerned.

Dr. SCOTT: No. The question between them was finally settled by this allotment of the land.

Hon. Mr. STEVENS: As far as the Department of Indian Affairs is concerned, the Superintendent-General and yourself as Assistant Superintendent-General, are really guardians or trustees of the Indians' rights.

Dr. SCOTT: Yes, under the provisions of the Indian Act.

Hon. Mr. STEVENS: We come back to the position as pointed out a moment ago by Senator Belcourt; that any claims which we might now recognize would be against the province, and not against the Dominion.

Dr. SCOTT: That is clear, because the province has the lands.

Hon. Mr. BELCOURT: Might I ask, on that point, what part, if any, the Indians took in connection with the Royal Commission of 1912.

Dr. SCOTT: They appeared before the Commissioners.

Hon. Mr. BELCOURT: Did they submit their rights?

Dr. SCOTT: No, the Commission met with this question by saying to the Indians they had no power to deal with it; the Commission said they were to set apart reserves.

Hon. Mr. BELCOURT: In 1914, the Dominion and Provincial governments agreed upon a reference to the Exchequer Court.

Dr. SCOTT: No, not the Provincial government.

Hon. Mr. BENNETT: The Provincial government refused to do it. That is the difficulty.

Dr. SCOTT: May I say that I asked the government to pass that Order in Council so that, for the first time, the nature of the title of the Indians would be recognized. By that Order in Council, the Dominion and Provincial governments stated they were willing to assume the responsibility of giving the land, but they said the Indians must accept the land subject to control by that Commission.

Hon. Mr. STEVENS: The Indians never agreed to that.

Dr. SCOTT: No, the Indians never agreed to that.

Hon. Mr. BELCOURT: If that is the case, is there anything to show that the Indians committed themselves at any time, in regard to these questions? They have accepted money.

Dr. SCOTT: They have accepted those benefits from the land.

Hon. Mr. BELCOURT: Did the Indians commit themselves in respect of any of the provisions of the agreement, in regard to title?

Dr. SCOTT: With the exception of what is already stated in the Treaty; 104,000 miles on the southern point of Vancouver Island.

Hon. Mr. BELCOURT: Let us take it with regard to the province of British Columbia; the Royal Commission of 1912 stated the amount of expenditure which British Columbia was bound to make.

Dr. SCOTT: They ratified that.

Hon. Mr. BELCOURT: All this committee can do now is to say to the Provincial government, you agreed to do so and so.

Dr. SCOTT: That is all.

Hon. Mr. MURPHY: What did the Indians say with reference to the land set aside by that Commission, did they occupy the land?

Dr. SCOTT: Yes.

Hon. Mr. MURPHY: Did the Commission set apart new reserves for them, and is that held by the government to be a fair settlement of the question of reserves?

Dr. SCOTT: Of course, the Indians are demanding 160 acres per head, in the province of British Columbia. You will find that stated in the pamphlet; that may be developed later on before the Committee, as to what the claim actually is.

Hon. Mr. MURPHY: Which would be in excess of the land set aside by the Royal Commission?

Dr. SCOTT: Yes, tremendously in excess.

Hon. Mr. MCLENNAN: Have any areas been selected for them?

Dr. SCOTT: They were selected with great care by them, as lands being occupied and used by the Indians, to which they had aboriginal title. There are over 1,200 reserves in British Columbia.

Hon. Mr. MURPHY: They were not moved to other places?

Dr. SCOTT: No, they were not evicted. Some hardship occurred on account of land being pre-empted which had been occupied by Indians, but this was through inadvertence. The British Columbia government has been able, in some cases, to get back the land, and give it to the Indians. The British Columbia government has acted throughout, reasonably and generously. We were willing to do what we could, in regard to such allotment, but the Indians are not satisfied with those reserves; in some instances, in regard to the quantity of the land, and some places, as to location.

Hon. Mr. MCLENNAN: Did they appear before the Royal Commission?

Dr. SCOTT: In some cases they were represented.

Hon. Mr. BELCOURT: Did they ever put forward claims which have not been adjudicated upon?

Hon. Mr. MURPHY: No, they refused to do so.

Mr. MCPHERSON: No compensation was made, outside of the compensation for land.

Dr. SCOTT: Yes. You will find it in the pamphlet which was printed, and presented to the British Columbia Government in 1919, and which contains the conditions imposed as the basis of settlement.

Mr. MCPHERSON: That is in the printed report, filed.

Dr. SCOTT: Yes, you will see it in one of the appendices of my report.

With reference to the 160 acres of land, in sections of the province where the character of the available land made it undesirable to carry out the agreement, it was proposed that the Indians should be compensated for such deficiency by being given hunting lands, or otherwise, according to the conditions of each section. Any existing inequalities in respect of acreage, and value, were to be adjusted. The claims with respect to land were enormous.

Hon. Mr. BELCOURT: We cannot suggest anything to our parliament that could be at all effective. If we were to decide on this question of law, British Columbia would refuse to accept our jurisdiction. If British Columbia takes the ground that they have an agreement, and that is the end of it, I do not see what purpose this committee can serve by hearing all these people. It seems to me that we are up against an insuperable difficulty.

Hon. Mr. BENNETT: In the New England States, title was predicated upon the same basis.

Hon. Mr. BELCOURT: It becomes a purely academic question.

The CHAIRMAN: The point is, do you want to ask Dr. Scott any more questions.

Hon. Mr. MURPHY: He will be at our disposal.

Hon. Mr. BELCOURT: I seriously suggest that I think the work of this Committee is finished; we cannot do anything more; we cannot make any kind of suggestion, or report that will be effective. It is a question of law in which one of the parties interested refused to come here and have anything to do with it.

Hon. Mr. STEWART: The adjustment between the two governments is complete, as to what they agree is required for reserves, for the benefit of the Indians.

Hon. Mr. BELCOURT: That is not in dispute here.

Hon. Mr. STEWART: It is, to this extent, the Indians, as our wards, have never agreed to it as a definite settlement. However, it must be borne in mind that even if they have not agreed, they have been occupying and accepting the reserves. That situation is not uncommon in other provinces where they have the same problem. I understand that British Columbia takes the ground that the Indians will get nothing more, that the settlement arrived at was thought to be a reasonable settlement. British Columbia may take the ground that if we want more ground for the Indians, we will have to pay for it. The other provinces will not always take that position, particularly if they have lands that are Crown lands. They would not buy the lands, that is true, but it seems to me that as this is such a controversial question, we might as well hear these people who have come here. It must not be said that the Government, after hearing Dr. Scott, closed the case.

Hon. Mr. BELCOURT: My observation had particular reference to the question of title, which I understand is the main question that has been referred to this Committee. You have separated that question from the one point of which you have just spoken; it is a different question all together. As to the question of acreage, that is a matter to be adjusted between the departments. On the question of aboriginal title, I say it is utterly hopeless for us to proceed.

Hon. Mr. BENNETT: I think, to the extent of which it is possible for us to make a declaration, it might be desirable for us to do so. I quite agree with what Senator Belcourt has said. We could make a report and declaration that our opinion is so and so, and Parliament might possibly implement that later, by some form of legislation which would be of a declaratory character.

Hon. Mr. BELCOURT: I have no objection to hearing the witnesses, but I thought I should point out that situation.

Hon. Mr. STEVENS: I suggest that we hear the Indians, and their representative, but that the case, in its presentation, should be divided into two parts. Dr. Scott will correct me if I am wrong in my interpretation of the situation when I say that the present claim in regard to the aboriginal title, which is the thing that has been adjudicated, should be kept separate from the other questions regarding administration, and whether there has been a full settlement made by the province of British Columbia in accordance with the findings of the Royal Commission of 1912. That is the question which I do not think the Dominion Government will have very great difficulty in adjudicating. As far as this Parliament is concerned, the question of aboriginal title should be disposed of, and the other dealt with separately; otherwise, we will get into an endless discussion.

Mr. McPherson: All the information I have on this, Mr. Chairman, is a copy of a petition filed in the Senate last year. I gather that the government had practically decided what they thought was the correct settlement of this question between the Dominion and the Provinces, but that that is not satisfactory to the Indians and they want to submit their claims to the Privy Council. It would look as if that was one of the main issues in their petition. If there is a dispute and the Indians will not accept the provision made, then the committee will have to decide on that point, which might waive the necessity for us going into detail.

Hon. Mr. Murphy: Can we determine what is at issue unless we hear the other side? Is it not all speculation in advance of that?

Hon. Mr. Stevens: Yes.

Hon. Mr. Belcourt: Do I understand that the Indians are asking to have a stated case?

Mr. McPherson: To be submitted to the Privy Council. "That immediate steps be taken for facilitating an independent proceeding." That is a reference so that their petition might be brought before His Majesty's Privy Council. " Or such other judicial action as might be found necessary to secure the judgment of the judicial committee of the Privy Council."

Hon. Mr. Belcourt: Would that have to be submitted to our own Courts?

Mr. McPherson: They ask for the Privy Council.

Hon. Mr. Stewart: Would it not be well now to hear argument from the representative of the Allied Tribes as to their contention that they have an aboriginal title, despite the fact that the claim is made, and acquiesced in; apparently, that that was cancelled. Doctor Scott has submitted a memorandum which will be printed for the benefit of the members of the committee. The point as to the aboriginal title is one upon which they should be given an opportunity to speak to the committee, and then we can decide how far we will go later.

Hon. Mr. Murphy: Who is to do that, Mr. Stewart?

Hon. Mr. Stewart: Who is to speak for you, Mr. Paull?

Mr. Paull: Dealing with the constitutional matters, Mr. Chairman? I would like to ask Doctor Scott a question before he leaves.

The Chairman: Certainly.

Mr. Paull: Doctor Scott has dealt with one phase only of the constitutional matters included in this case. I would respectfully ask the hon. members of the committee not to form any hurried conclusions before they have listened to the constitutional matters involved in this question.

The Chairman: Mr. Paull, before you start, I think for the information of the members of the committee, you had better state why you are here, and your standing. Whom do you represent?

Mr. Paull: My name is Andrew Paull. I am a full-blooded Indian of the Squamish tribe, and I am secretary of the executive committee of the Allied Indian Tribes of British Columbia.

The Chairman: Mr. Paull, do the Allied Tribes include all of your people? You are not speaking for every tribe in British Columbia?

Mr. Paull: As far as the aboriginal title is concerned, I am speaking for the organization of the Indians in British Columbia, dealing with this question. Other Indians may come here and represent themselves, dealing with their own particular reserves.

Hon. Mr. Bennett: What tribes do you represent?

Mr. Paull: I represent nearly all the tribes in British Columbia. I might name some of them from memory. On the southern coast, the Squamish Indians;

all the Indians on Vancouver Island, east and west coasts; the Indians up the coast of British Columbia, all along the coast.

Hon. Mr. STEVENS: Do you represent the Indians in the interior? At Kamloops and the Okanagan?

Mr. PAULL: The greater part of the Interior Indians, with the exception of those Indians represented by Chief John Chillihitse. I do not know just the proper name of his locality, but he is striving for the same thing.

Hon. Mr. MCLENNAN: Could you tell us about the relative number of Indians that you represent and that are not represented?

Mr. PAULL: I think we lack only about 200 of the Indians in British Columbia.

Hon. Mr. STEVENS: Then there is a committee of white men associated with you, is there not, Mr. Paull?

Mr. PAULL: In a sympathetic way; they are giving us their moral support; the Society of Friends of the Indians of British Columbia, in British Columbia. Then there is a society of white people in eastern Canada.

The CHAIRMAN: Before you give further evidence, Mr. Paull, you should be sworn, to give evidence before the committee.

ANDREW PAULL sworn.

Hon. Mr. MURPHY: I understand Mr. Paull to say he wanted to ask Doctor Scott a question or two before he gave his own evidence. It might be more regular to do that, and then the witness could go on.

The WITNESS: I would like Doctor Scott to inform the committee if it is not a fact that the major portions of the expenditures of the government towards the Indians of British Columbia did not go in a large way for schools and education? I wish Doctor Scott would make it clear that the Indians in British Columbia did not receive any monetary compensation individually.

Dr. SCOTT: I stated that they received no annuity; which answers a portion of the question. The financial statement is arranged in sub-heads. $5,422,870.05 has been spent on education.

Hon. Mr. STEVENS: That is boarding schools?

Dr. SCOTT: Yes, boarding and day schools. I might read all the headings:—

Relief, $601,787; aid to agriculture, $162,881; medical attendance, $1,364,000 odd; schools, $5,442,000; travelling expenses, $50,000.

That is the travelling expenses of agents.

Miscellaneous, $578,150.

That is dyking and irrigation and all sorts of miscellaneous expenditures.

Surveys and Irrigation, $314,385.

Hon. Mr. MCLENNAN: Have you the total there?

Dr. SCOTT: Yes, the total is $10,800,300.

Hon. Mr. MCLENNAN: About half for education then?

Dr. SCOTT: Yes.

The WITNESS: Now I would like Doctor Scott to file a report with this committee showing how much of the Indians' own funds have been expended for schools, education, hospitals, medicine, medical attendance, and for the maintenance of law and order in British Columbia. It may be a bit of information to the hon. members of this committee to know that the Indians themselves have expended some money out of their own tribal funds in paying policemen

to maintain law and order in the province of British Columbia. I am sorry the Honourable Mr. Oliver has left. That would have been a good piece of information for him. I would ask Doctor Scott to file a report to show how the Indians have spent money on those things.

Hon. Mr. STEWART: Mr. Paull, we only have twenty minutes; will you deal with that very important matter, the question of aboriginal title, first.

The WITNESS: It is impossible to deal with it in its entirety in twenty minutes, but I will endeavour to give the gist of it. I would like to ask Mr. O'Meara to present the argument on our behalf on the constitutional matter. Doctor Scott dealt with Article Thirteen of the Terms of Union. It would appear from his memorandum that that article alone was the one which governs this whole controversy. It is not. I am sorry to see that he did not deal with Section 109 of the British North America Act, which, in my humble opinion, concerns the aboriginal title. I notice the reply of the government of the Province of British Columbia. They depend on Section 109.

By Hon. Mr. Belcourt:

Q. Have you the text of that?—A. I am sorry I did not come here this morning prepared, but I am sure Mr. O'Meara has that.

Hon. Mr. STEWART: Here it is.

Hon. Mr. MCLENNAN: Would you read it, please?

Hon. Mr. BELCOURT: (Reading):

> All lands, mines, minerals, and royalties, belonging to the several provinces of Canada, Nova Scotia, and New Brunswick at the union, and all sums then due or payable for such lands, mines, minerals, or royalties, shall be known to the several provinces of Ontario, Quebec, Nova Scotia, and New Brunswick in which the same are situate or arise, subject to any trusts existing in respect thereof, and to any interest other than that of the province in the same.

By Hon. Mr. Belcourt:

Q. You are relying on the words "subject to any trusts existing in respect thereof?"—A. Yes. Now it may be hard for me to give an expression of opinion as to the exact meaning of that, but we hope, during the course of our representations to this committee, to construe it. We will quote decisions to explain just exactly what that means, and we are relying on that section and the decisions to substantiate our claim.

By Hon. Mr. Stevens:

Q. May I ask you there, Mr. Paull, so as to get your claim clearly stated, under that section of the Act; do you claim that British Columbia, when it entered Confederation, held in trust for you all the lands, mines, minerals, and so on, as set forth in that section?—A. The title of the lands in the province of British Columbia rested in the Crown, to be held in trust for the British Columbia government. But before that, there was another interest; it was subject to another interest, and that interest was the Indian interest, which was capable of being brought into competition with the interest of the province.

By Hon. Mr. Belcourt:

Q. Do you mean the Indian occupation interest? The claim derived from occupation?

Hon. Mr. BENNETT: No, they do not limit it to occupation.

Hon. Mr. STEVENS: I should like to get precisely what they do claim.

The WITNESS: I have not got the decisions with me.

Hon. Mr. BELCOURT: We should know what is the nature of this interest.

Hon. Mr. STEVENS: The committee would like to get your view, representing the Indians, as to just what they claim.

By Hon. Mr. Belcourt:

Q. Would you rather leave that to someone else to deal with?—A. I would rather be given an opportunity to quote from documents which I have prepared, and which we have had prepared. I do not intend to limit my representations to this committe, to this time only; I hope to have the privilege of appearing again, and I would rather not be pressed in that matter for the time being.

Q. All right; go on with your statement.—A. Our chairman, Mr. Kelly, will be here this week, and I hope the committee will give him an opportunity to make representations as well. There are other Indians here in the city now, and we would like the committee to listen to them before we make our representations. Mr. Kelly and myself realize the responsibility that we have to the Indians in British Columbia. I would ask Mr. O'Meara to present our constitutional argument before this committee, either now or at the pleasure of the committee, before we, the Indians, make any further representations, so that the committee may not hurriedly arrive at a decision upon the memorandum of Dr. Scott. I would humbly pray that you listen to Mr. O'Meara's argument now.

The CHAIRMAN: We have hardly time for that this morning. Have the members of the Committee any further questions they want to ask Mr. Paull at the moment?

Hon. Mr. MURPHY: This witness says, Mr. Chairman, that their argument with reference to the constitutional phase of the matter is to be presented by another gentleman. Then why not adjourn now and hear him next?

Hon. Mr. STEVENS: I hope, Mr. Chairman, that the committee will try to keep to the points I mentioned.

Hon. Mr. MURPHY: I must certainly object to hearing speeches from other gentlemen who are said to be in the city. We want first representations of fact.

Hon. Mr. STEWART: I think, Senator Murphy, that we have summoned these witnesses, and the committee can decide whether they want to hear them or not after we have heard the main argument. I take it that what the committee are anxious about now is rebuttal evidence on the constitutional question.

The CHAIRMAN: For the information of the committee, I may say that Messrs. Andrew Paull, A. E. O'Meara, Rev. P. R. Kelly, W. E. Ditchburn, and Chief Chillihitza have been summoned to appear before the committee.

Hon. Mr. TAYLOR: Then had we better not adjourn now until to-morrow morning?

Hon. Mr. STEWART: Let us be clear about this: shall Mr. O'Meara appear at ten o'clock tomorrow morning to present argument on this question, or on any other?

Hon. Mr. BELCOURT: Mr. Chairmain, may I suggest that the proper way for the committee to proceed would be to hear what is evidence, and when we have heard the evidence, then hear an argument by whoever wants to make it. We want the evidence first. If we have arguments submitted before we hear the evidence, we will be here for a longer time than we are able to give.

Hon. Mr. STEWART: The evidence is in rebuttal of what is claimed.

Hon. Mr. BELCOURT: Let us distinguish between evidence and argument. Mr. O'Meara is simply going to argue the question. Then let us hear him when we have all the facts before us.

Hon. Mr. GREEN: Is not Mr. O'Meara here to present the case for the Indians?

Hon. Mr. STEVENS: Mr. Paull is asking that Mr. O'Meara, as counsel, argue the constitutional point. I think before he does that, the Indians should present to us their views of their claims to the degree that they want to show them. Then Mr. O'Meara can make his argument as counsel, if we are going to recognize him as counsel instead of as a witness.

Hon. Mr. MCLENNAN: In other words, the Indians will present what they have to say in criticism, or modification of Doctor Scott's departmental statement.

Hon. Mr. MURPHY: Or in support of their own claim.

Hon. Mr. MCLENNAN: Yes, or in support of their own claim.

Hon. Mr. BELCOURT: Mr. Paull was sworn for the purpose of giving evidence. He has not yet given us a single fact. He has argued, and that is all.

Hon. Mr. BARNARD: Is it not of importance that we should know exactly what they claim, and then we can to some extent confine the evidence and argument to the issue?

Mr. MCPHERSON: Apparently Mr. Paull wants Mr. O'Meara to state his claim.

The WITNESS: If it is the wish of the committee that I should give evidence before the constitutional argument is made, I am prepared to do so. I would like to be given the privilege of speaking after Chief Chillihitza.

Hon. Mr. STEVENS: We do not want to get into a squabble between different parties here. Let them give their evidence as they are summoned before the committee, and we will treat them all fairly.

Hon. Mr. STEWART: I am of the opinion that Mr. O'Meara should appear as a witness, rather than as counsel. There is not any doubt that the claim of the Indians will have to be presented by someone familiar with putting facts before the committee. They apparently have selected Mr. O'Meara, and I think he should give his statement before the witnesses are called.

Mr. MCPHERSON: The same as Mr. Paull.

Hon. Mr. STEWART: He should present the case of the Indians with respect to the aboriginal title. The argument will come later.

Hon. Mr. BELCOURT: We will have both statements of fact and argument from Mr. O'Meara.

The CHAIRMAN: Gentlemen, I understand there is a Mr. Beament here, who wants to know whether the committee will allow him to appear as counsel for the Indians. He is here now, and perhaps you will hear what he has to say.

Hon. Mr. MURPHY: Mr. Chairman, with all respect, I think we should decide one thing at a time. First let us settle our own procedure as a committee.

Mr. A. W. BEAMENT (Barrister, Ottawa): Mr. Chairman, I wish to appear as counsel for the petitioners. I was trying to get the ear of the committee with regard to the discussion which has taken place. I think Mr. McPherson has touched the real point at issue. The petitioners should, I submit, be given an opportunity now to put in evidence proving the allegations stated in the petition, and that all the evidence put in and the argument should be directed towards the claims stated in the petition. That is, we should satisfy this committee first of all that there are substantial legal questions at issue between the Indians and the two governments. If we satisfy them that there are substantial legal questions, we should not go on to argue the absolute

merits of those questions; we should then confine ourselves to proving our right to have those substantial judicial questions adjudicated upon by a competent tribunal. That is all we are asking this committee to do. We are not asking the committee to adjudicate upon the merits of our substantive claim. We are only asking them to facilitate and expedite a hearing by as competent a tribunal as can be found, of these claims that we make.

With regard to Mr. O'Meara's position, which the Hon. Mr. Stewart has touched upon, I will submit to the committee that it is not inconsistent with his appearing as counsel for the petitioners, and also giving evidence, as long as professional opinions are not included in that. Certainly he has no objection to acting as I have stated.

Hon. Mr. STEVENS: There is this difficulty, that I think we ought to avoid; we are not putting the Department of Indian Affairs on trial before this committee, as regards minor matters. As I understand it, we are here for the purpose of hearing the Indians regarding this claim of aboriginal title chiefly. There may be some other matters that they would like to bring before us, but certainly we should not put the Department of Indian Affairs on trial here before the committee.

Mr. MCPHERSON: May I suggest that when we finish that question we will then be in the position of settling something that the government of British Columbia is affected by only. I am rather puzzled as to what we can do if we want to do anything here.

Hon. Mr. STEWART: There is just this one point, and that is that I would like the evidence first, because there is no use wandering all over the map on the question of what the Federal and Provincial governments should do with the Indians. We would be very glad to hear that, but I agree with Mr. Stevens that there has been so much said about the rights of the Indians and their right to consideration for their aboriginal title, and also statements have been made definitely that by the right of conquest the lands of British Columbia became the property of the Crown, and that the Crown was willing to treat the Indians and give to them similar rights that were enjoyed in other parts of Canada, treating them exactly as other aborigines were treated in Canada.

Hon. Mr. BENNETT: Perhaps a little better.

Hon. Mr. STEWART: If there is to be rebuttal evidence offered in respect of the question of conquest, to show us that that was not the fact, and that there is an Indian claim that was not extinguished, I think the committee should have evidence to that effect.

Hon. Mr. BENNETT: But a speech will not do it.

Hon. Mr. STEWART: No, we want evidence.

Hon. Mr. BELCOURT: There is no objection to that. I do not want to be misunderstood. I do not object to that at all, but I want to get the facts before I pronounce upon the facts.

Hon. Mr. STEWART: That is the point. Let the witnesses understand that they are to come prepared on these questions, and not to spread all over creation on other matters.

Hon. Mr. MURPHY: Then shall we meet to-morrow morning at ten o'clock, Mr. Chairman, and hear the witnesses?

The CHAIRMAN: Yes.

Hon. Mr. STEVENS: And all the witnesses will be called to-morrow morning.

The CHAIRMAN: Whoever they decide to call.

Mr. O'MEARA: I have not stated a sentence on behalf of the tribes yet, Mr. Chairman.

The CHAIRMAN: You will be given an opportunity at ten o'clock to-morrow morning.

Mr. O'MEARA: To go into the whole matter?

Hon. Mr. STEWART: The committee wants you to come prepared to argue the points raised this morning.

Mr. O'MEARA: I understand perfectly well.

The Witness retired.

The committee adjourned until 10 a.m., Thursday, March 31st, 1927.

APPENDIX A

STATEMENT OF THE ALLIED INDIAN TRIBES OF BRITISH COLUMBIA FOR THE GOVERNMENT OF BRITISH COLUMBIA

Part I.—General Introductory Remarks

The Statement prepared by the Committee appointed by the Conference held at Vancouver in June, 1916, and sent to the Government of Canada and the Secretary of State for the Colonies, contained the following:

> The Committee concludes this statement by asserting that, while it is believed that all of the Indian tribes of the province will press on to the Judicial Committee, refusing to consider any so-called settlement made up under the McKenna Agreement, the Committee also feels certain that the tribes allied for that purpose will always be ready to consider any really equitable method of settlement out of court which might be proposed by the Governments.

A resolution, passed by the Interior Tribes at a meeting at Spence's Bridge on the 6th December, 1917, contained the following:—

> We are sure that the governments and a considerable number of white men have for many years had in their minds a quite wrong idea of the claims which we make, and the settlement which we desire. We do not want anything extravagant, and we do not want anything hurtful to the real interests of the white people. We want that our actual rights be determined and recognized. We want a settlement based upon justice. We want a full opportunity of making a future for ourselves. We want all this done in such a way that in the future we shall be able to live and work with the white people as our brothers and fellow citizens.

Now we have been informed by our Special Agent that the Government of British Columbia desires to have from us a statement further explaining our mind upon the subject of settlement, and in particular stating the grounds upon which we refuse to accept as a settlement the findings of the Royal Commission on Indian Affairs for the Province of British Columbia, and what we regard as necessary conditions of equitable settlement.

In order that our mind regarding this whole subject may be understood, we desire first to make clear what is the actual present position of the Indian land controversy in this Province of British Columbia.

Throughout practically the whole of the rest of Canada, tribal ownership of lands has been fully acknowledged, and all dealings with the various tribes have been based upon the Indian title so acknowledged.

It was long ago conceded by Canada in the most authoritative way possible that the Indian tribes of British Columbia have the same title. This is proved beyond possibility of doubt by the report of the Minister of Justice, which was presented on January 19, 1875, and was approved by the Governor General in Council on January 23, 1875. We set out the following extract from that report:

> Considering then these several features of the case, that no surrender or cession of their territorial rights, whether the same be of a legal or equitable nature, has been ever executed by the Indian Tribes of the province—that they allege that the reservations of land made by the Government for their use have been arbitrarily so made, and are totally inadequate to their support and requirements and without their assent—that they are not averse to hostilities in order to enforce rights which it

is impossible to deny them, and that the Act under consideration not only ignores those rights, but expressly prohibits the Indians from enjoying the rights of recording or preëmpting land, except by consent of the Lieutenant-Governor, the undersigned feel that he cannot do otherwise than advise that the Act in question is objectionable as tending to deal with lands which are assumed to be the absolute property of the province, an assumption which completely ignores as applicable to the Indians of British Columbia, the honour and good faith with which the Crown has in all other cases since its sovereignty of the territories in North America dealt with their various Indian tribes.

The undersigned would also refer to the British North America Act, 1867, section 109, applicable to British Columbia, which enacts in effect that all lands belonging to the province, shall belong to the province, ' subject to any trust existing in respect thereof, and to any interest other than that of the province in the same.'

That which has been ordinarily spoken of as the ' Indian title ' must of necessity consist of some species of interest in the lands of British Columbia.

If it is conceded that they have not a freehold in the soil, but that they have an usufruct, a right of occupation or possession of the same for their own use, then it would seem that these lands of British Columbia are subject, if not to a ' trust existing in respect thereof,' at least ' to an interest other than that of the Province herein.'

Since the year 1875, however, notwithstanding the report of the Minister of Justice then presented and approved, local governments have been unwilling to recognize the land rights which were then recognized by Canada, and the two governments that entered into the McKenna-McBride Agreement failed to recognize those land rights.

If now the two governments should be willing to accept the report and Order in Council of the year 1875 as deciding the land controversy, they would thereby provide what we regard as the only possible general basis of settlement other than a judgment of the Judicial Committee of His Majesty's Privy Council.

By means of the direct and independent petition of the Nishga Tribe, we now have our case before His Majesty's Privy Council. We claim that we have a right to a hearing, a right which has now been made clear beyond any possibility of doubt. Sir Wilfrid Laurier, when Prime Minister, on behalf of Canada, met the Indian Tribes of Northern British Columbia, and promised without any condition whatever that the land controversy would be brought before the Judicial Committee. Moreover, the Duke of Connaught, acting as His Majesty's representative in Canada, gave positive written assurances that if the Nishga Tribe should not be willing to agree to the findings of the Royal Commission, His Majesty's Privy Council will consider the Nishga petition. In view of Sir Wilfrid Laurier's promise, and the Duke of Connaught's assurances, both of which confirm what we regard as our clear constitutional right, we confidently expect an early hearing of our case.

Before concluding these introductory remarks, we wish to speak of one other matter which we think very important. No settlement would, we are very sure, be real and lasting unless it should be a complete settlement. The so-called settlement which the two governments that entered into the McKenna-McBride Agreement, have made up is very far indeed from being complete. The report of the Royal Commission deals only with lands to be reserved. The reversionary title claimed by the Province is not extinguished, as Special Commissioner McKenna said it would be. Foreshores have not been dealt with. No attempt is made to adjust our general rights, such as fishing rights, hunting rights and water rights. With regard to fishing rights and water rights, the

Commissioners admit that they can make nothing sure. It is clear to us that all our general rights, instead of being taken from us as the McKenna-McBride Agreement attempts to do by describing the so-called settlement thereby arranged as a " final adjustment of all matters relating to Indian affairs in British Columbia " should be preserved and adjusted. Also we think that a complete settlement should deal with the restrictions imposed upon Indians by Provincial Statutes and should include a revision of the Indian Act.

Now, having as we hope made clear the position in which we stand, and from which we look at the whole subject, we proceed to comply with the desire of the government of British Columbia.

Part II—Report of the Royal Commission

Introductory Remarks

The general view held by us with regard to the report of the Royal Commission was correctly stated in the communication sent by the Agents of the Nishga Tribe to the Lord President of His Majesty's Privy Council on 27th May, 1918.

We now have before us the report of the Royal Commission, and are fully informed of its contents, so far as material for the purposes of this statement. The report has been carefully considered by the Allied Tribes, upon occasion of several meetings, and subsequently by the Executive Committee of the Allied Tribes.

Two general features of the report which we consider very unsatisfactory are the following:—

1. The additional lands set aside are to a large extent of inferior quality, and their total value is much smaller than that of the lands which the Commissioners recommend shall be cut off.

2. In recommending that reserves confirmed and additional lands set aside be held for the benefit of bands, the Commissioners proceeded upon a principle which we consider erroneous, as all reserved lands should be held for the benefit of the Tribes.

Grounds of Refusal to Accept

In addition to the grounds shown by our general introductory remarks, we mention the following as the principle grounds upon which we refuse to accept as a settlement the findings of the Royal Commission:—

1. We think it clear that fundamental matters such as tribal ownership of our territories require to be dealt with, either by concession of the governments, or by decision of the Judicial Committee, before subsidiary matters such as the findings of the Royal Commission can be equitably dealt with.

2. We are unwilling to be bound by the McKenna-McBride Agreement, under which the findings of the Royal Commission have been made.

3. The whole work of the Royal Commission has been based upon the assumption that Article 13 of the Terms of Union contains all obligations of the two governments towards the Indian Tribes of British Columbia, which assumption we cannot admit to be correct.

4. The McKenna-McBride Agreement, and the report of the Royal Commission ignore not only our land rights, but also the power conferred by Article 13 upon the Secretary of State for the Colonies.

5. The additional reserved lands recommended by the report of the Royal Commission, we consider to be utterly inadequate for meeting the present and future requirements of the Tribes.

6. The Commissioners have wholly failed to adjust the inequalities between Tribes, in respect of both area and value of reserved lands, which Special Commissioner McKenna, in his report, pointed out and which the report of the Royal Commission has proved to exist.

7. Notwithstanding the assurance contained in the report of Special Commissioner McKenna, that "such further lands as are required will be provided by the Province, in so far as Crown lands are available." The Province, by Act passed in the spring of the year 1916, took back two million acres of land, no part of which, as we understand, was set aside for the Indians by the Commissioners, whose report was soon thereafter presented to the governments.

8. The Commissioners have failed to make any adjustment of water-rights, which in the case of lands situated within the Dry Belt, is indispensable.

9. We regard as manifestly unfair and wholly unsatisfactory the provisions of the McKenna-McBride Agreement relating to the cutting-off and reduction of reserved lands, under which one-half of the proceeds of sale of any such lands would go to the Province, and the other half of such proceeds, instead of going into the hands or being held for the benefit of the Tribe, would be held by the Government of Canada for the benefit of all the Indians of British Columbia.

Part III.—Necessary Conditions of Equitable Settlement

Introductory Remarks

1. In the year 1915, the Nishga Tribe and the Interior Tribes allied with them, made proposals regarding settlement, suggesting that the matter of lands to be reserved be finally dealt with by the Secretary of State for the Colonies, and that all other matters requiring to be adjusted, including compensation for lands to be surrendered, be dealt with by the Parliament of Canada. Those proposals the Government of Canada rejected by Order in Council, passed in June, 1915, mainly upon the ground that the Government was precluded by the McKenna-McBride Agreement from accepting them. For particulars we refer to "Record of Interviews," published in July, 1915, at pages 21 and 105. It will be found that to some extent these proposals are incorporated in this statement.

2. Some facts and considerations which, in considering the matter of additional lands, it is, we think, specially important to take into account, are the following:—

(1) In the three States of Washington, Idaho and Montana, all adjoining British Columbia, Indian title has been recognized, and treaties have been made with the Indian tribes of those States. Under those treaties, very large areas of land have been set aside. The total lands set aside in those three States considerably exceeds 10,000,000 acres, and the per capita area varies from about 200 acres to about 600 acres.

(2) Portions of the tribal territories of four tribes of the Interior of British Columbia extend into the States above-mentioned, and thus portions of those tribes hold lands in the Colville Reservation, situated in the State of Washington, and the Flathead Reservation, situated in the State of Montana.

(3) By treaties made with the Indian Tribes of the Provinces of Saskatchewan and Alberta, there has been set aside an average per capita area of about 180 acres.

(4) For the five Tribes of Alberta that entered into Treaty No. 7, whose tribal territories all adjoin British Columbia having now a total Indian population of about 3,500, there was set aside a total area of about 762,000 acres, giving a per capita area of 212 acres.

(5) The facts regarding the Indian Tribes inhabiting that part of Northern British Columbia lying to the East of the Rocky Mountains shown in Interim Report No. 91 of the Royal Commission at pages 126, 127 and 128 of the Report show that the Royal Commission approved and adopted as a standard for the Indians of that part of the Province occupying Provincial lands the per capita area of 160 acres of agricultural land per individual, or 640 acres per familly of five, set aside under Treaty No. 8.

(6) As shown by the facts above stated, all the Tribes that are close neighbours of the British Columbia Indians on the South and East have had large areas per capita set aside for their use and benefit, and the Indians inhabiting the Northeastern portion of British Columbia have also been fairly treated in the matter of agricultural lands reserved for them. Notwithstanding that state of affairs, the areas set aside for all the other British Columbia Tribes average only thirty acres per capita, or from one-fifth to one-twentieth of the acreage of Reserves set aside for their neighbours.

(7) It may also be pointed out that at one time even this small amount of land was considered excessive for the needs of the Indian Tribes of British Columbia, as is shown by the controversy which in the year 1873 arose between the two Governments on the subject of acreage of lands to be reserved for the Indians of British Columbia. (See Report of Royal Commission at pages 16 and 17.) At that time the Dominion Government contended for a basis of 80 acres per family or 16 acres per capita, and the British Columbia Government contended for a basis of 20 acres per family or 4 acres per capita.

(8) It may further be pointed out that at that very time, while the Governments were discussing the question whether each individual Indian required 16 acres or 4 acres, the Provincial Government was allowing individual white men each to acquire by pre-emption 160 acres West of the Cascades and 320 acres East of that Range, each pre-emptor choosing his land how and where he desired.

(9) All the facts which we have above stated when taken together prove conclusively, as we think, that the per capita area of 30 acres recommended by the Royal Commission is utterly inadequate, and that a per capita area of 160 acres would be an entirely reasonable standard. That conclusion is completely confirmed by our knowledge of the actual land requirements of our Tribes.

(10) At the same time it is clear to us that, in applying that standard, the widely differing conditions and requirements of various sections of the Province should be taken into consideration.

(11) We proceed to state what are the conditions and requirements of each of the sections to which we have referred.

(12) For that purpose we divide the Province into five sections as follows:

I. Southern Coast.

II. Northern Coast, together with the West Coast of Vancouver Island.

III. Southern Interior.

IV. Central Interior.

V. Northern Interior.

In the case of Section I all conditions are favourable for agriculture, and the Indians require much more agricultural land.

In the case of Section II the conditions are such that the country is not to any great extent agricultural. The Indians require some additional agricultural land together with timber lands.

In the case of Section III the conditions are more favourable to stock raising than to agriculture. Throughout the Dry Belt irrigation is an absolute necessity for agriculture. The Indians require large additional areas of pasture land.

In the case of Section IV there is abundance of good agricultural land, but the climatic conditions are not favourable for stock raising and fruit growing. The Indians require additional areas of agricultural land.

In the case of Section V the conditions are wholly unfavourable to both agriculture and stock raising. The main requirement of the Indians is that, either by setting aside large hunting and trapping areas for their exclusive use or otherwise, hunting and trapping the main industry upon which of necessity they rely, should be fully preserved for them.

3. It is quite clear to us that these conditions of settlement require to be considered by the Government of Canada as well as the Goverment of British Columbia.

Conditions Proposed as Basis of Settlement

We beg to present for consideration of the two Governments the following which we regard as necessary conditions of equitable settlement:

1. That the Proclamation issued by King George III in the year 1763 and the Report presented by the Minister of Justice in the year 1875 be accepted by the two Governments and established as the main basis of all dealings and all adjustments of Indian land rights and other rights which shall be made.

2. That it be conceded that each Tribe for whose use and benefit land is set aside (under Article 13 of the "Terms of Union") acquires thereby a full, permanent and beneficial title to the land so set aside together with all natural resources pertaining thereto; and that Section 127 of the Land Act of British Columbia be amended accordingly.

3. That all existing reserves not now as parts of the Railway Belt or otherwise held by Canada be conveyed to Canada for the use and benefit of the various Tribes.

4. That all foreshores whether tidal or inland be included in the reserves with which they are connected, so that the various Tribes shall have full permanent and beneficial title to such foreshores.

5. That adequate additional lands be set aside and that to this end a per capita standard of 160 acres of average agricultural land having in case of lands situated within the dry belt a supply of water sufficient for irrigation be established. By the word "standard" we mean not a hard and fast rule, but a general estimate to be used as a guide, and to be applied in a reasonable way to the actual requirements of each tribe.

6. That in sections of the Province in case of which the character of available land and the conditions prevailing make it impossible or undesirable to carry out fully or at all that standard the Indian Tribes concerned be compensated for such deficiency by grazing lands, by timber lands, by hunting lands or otherwise, as the particular character and conditions of each such section may require.

7. That all existing inequalities in respect of both acreage and value between lands set aside for the various Tribes be adjusted.

8. That for the purpose of enabling the two Governments to set aside adequate additional lands and adjust all inequalities there be established a system of obtaining lands including compulsory purchase, similar to that which is being carried out by the Land Settlement Board of British Columbia.

9. That if the Governments and the Allied Tribes should not be able to agree upon a standard of lands to be reserved that matter and all other matters relating to lands to be reserved which cannot be adjusted in pursuance of the preceding conditions and by conference between the two governments and the Allied Tribes be referred to the Secretary of State for the Colonies to be finally decided by that Minister in view of our land rights conceded by the two Governments in accordance with our first condition and in pursuance of the provisions of Article 13 of the "Terms of Union" by such method of procedure as shall be decided by the Parliament of Canada.

10. That the beneficial ownership of all reserves shall belong to the Tribe for whose use and benefit they are set aside.

11. That a system of individual title to occupation of particular parts of reserved lands be established and brought into operation and administered by each Tribe.

12. That all sales, leases and other dispositions of land or timber or other natural resources be made by the Government of Canada as trustee for the Tribe with the consent of the Tribe and that of all who may have rights of occupation affected, and that the proceeds be disposed of in such way and

used from time to time for such particular purposes as shall be agreed upon between the Government of Canada and the Tribe together with all those having rights of occupation.

13. That the fishing rights, hunting rights, and water rights of the Indian Tribes be fully adjusted. Our land rights having first been established by concession or decision we are willing that our general rights shall after full conference between the two Governments and the Tribes be adjusted by enactment of the Parliament of Canada.

14. That in connection with the adjustment of our fishing rights the matter of the international treaty recently entered into which very seriously conflicts with those rights be adjusted. We do not at present discuss the matter of fishing for commercial purposes. However, that matter may stand. We claim that we have a clear aboriginal right to take salmon for food. That right the Indian Tribes have continuously exercised from time immemorial. Long before the Dominion of Canada came into existence that right was guaranteed by Imperial enactment, the Royal Proclamation issued in the year 1763. We claim that under that Proclamation and another Imperial enactment, Section 109 of the British North America Act, the meaning and effect of which were explained by the Minister of Justice in the words set out above, all power held by the Parliament of Canada for regulating the fisheries of British Columbia is subject to our right of fishing. We therefore claim that the regulations contained in the treaty cannot be made applicable to the Indian Tribes, and that any attempt to enforce those regulations against the Indian Tribes is unlawful, being a breach of the two Imperial enactments mentioned.

15. That compensation be made in respect of the following particular matters:

(1) Inequalities of acreage or value or both that may be agreed to by any Tribe.

(2) Inferior quality of reserved lands that may be agreed to by any Tribe.

(3) Location of reserved lands other than that required agreed to by any Tribe.

(4) Damages caused to the timber or other natural resources of any reserved lands as for example by mining or smelting operations.

(5) All moneys expended by any Tribe in any way in connection with the Indian land controversy and the adjustment of all matters outstanding.

16. That general compensation for lands to be surrendered be made.

(1) By establishing and maintaining an adequate system of education, including both day schools and residential industrial schools, etc.

(2) By establishing and maintaining an adequate system of medical aid and hospitals.

17. That all compensations provided for by the two preceding paragraphs and all other compensation claimed by any Tribe so far as may be found necessary be dealt with by enactment of the Parliament of Canada and be determined and administered in accordance with such enactment.

18. That all restrictions contained in the Land Act and other Statutes of the Province be removed.

19. That the Indian Act be revised and that all amendments of that Act required for carrying into full effect these conditions of settlement, dealing with the matter of citizenship, and adjusting all outstanding matters relating to the administration of Indian affairs in British Columbia be made.

20. That all moneys already expended and to be expended by the Allied Tribes in connection with the Indian land controversy and the adjustment of all matters outstanding be provided by the Governments.

Part IV.—Concluding Remarks

In conclusion we may remark that we have been fully informed on all matters material to the preparation of this Statement, and have been advised on all matters which we considered required advice. We have conducted a full discussion of all points contained in the Statement, and have been careful to obtain the mind of all the principal Allied Tribes on all the principal points. These discussions have taken place at various large inter-tribal meetings held in different parts of the Province, together with a meeting of the Executive Committee. As result, we think we thoroughly understand the matters which have been under consideration. Having discussed all very fully, we now declare this Statement to be the well-settled mind of the Allied Tribes.

We have carefully limited our Statement of what we think should be conditions of settlement to those we think are really necessary. We are not pressing these conditions of settlement upon the Governments. If the Governments accept our basis and desire to enter into negotiations with us, we will be ready to meet them at any time. In this connection, however, we desire to make two things clear. Firstly, we are willing to accept any adjustment which may be arranged in a really equitable way, but we are not prepared to accept a settlement which will be a mere compromise. Secondly, we intend to continue pressing our case in the Privy Council until such time as we shall obtain a judgment, or until such time as the Governments shall have arrived at a basis of settlement with us.

To what we have already said we may add that we are ready at any time to give whatever additional information and explanation may be desired by the Governments for the further elucidation of all matters embraced in our Statement.

We may further add that the Allied Tribes as a whole and the Executive Committee are not professing to have the right and power to speak the complete mind of every one of the Allied Tribes on all matters, particularly those matters which specially affect them as Individual Tribes. Therefore, if the Governments should see fit to enter into negotiations with us, it might become necessary also to enter into negotiations regarding some matters with individual tribes.

We certify that the Statement above set out was adopted at a full meeting of the Executive Committee of the Allied Tribes of British Columbia held at Vancouver on the 12th day of November, 1919, and by the Sub-Committee of the Executive Committee on the 9th day of December in the same year.

PETER R. KELLY,

Chairman of Executive Committee and member of Sub-Committee.

J. A. TEIT,

Secretary of Executive Committee and member of Sub-Committee.

APPENDIX B

EXCERPT FROM DOMINION AND PROVINCIAL LEGISLATION 1867-1895, PAGE 1024

REPORT OF THE HONOURABLE THE MINISTER OF JUSTICE, APPROVED BY HIS EXCELLENCY THE GOVERNOR GENERAL IN COUNCIL ON THE 23RD JANUARY, 1875

DEPARTMENT OF JUSTICE,
OTTAWA, 19th January, 1875.

The undersigned has the honour to report:—

That the Act passed by the legislature of the province of British Columbia, in the 37th year of Her Majesty's reign, and assented to on the 2nd March, 1874, is the following:—No. 2, intituled: "An Act to amend and consolidate the laws affecting Crown Lands in British Columbia."

The title of the Act explains its object. It is a consolidation of the laws relating to the recording and pre-emption of lands, the surveying and sale of them; the regulation of miners' rights, etc.

By its concluding section, the Act is not to come into force, until the Lieutenant-Governor's assent thereto has been proclaimed by notice in the British Columbia Gazette.

The 2nd, or interpretation clause, defines that the words "Crown lands" shall "mean all lands of this province held by the Crown in free and common soccage".

It is probably through inadvertence that this definition has been made, and that the tenure of free and common soccage which is that of freehold under grant from the Crown, is made applicable to lands of the Crown held as such by the Crown as lord of the soil.

Were it an intentional definition, it could only then mean a recognition of the Indian sovereignty therein, and that Her Majesty is tenant by freehold.

Abandoning, therefore, this statutable definition, which is inapplicable, the words "Crown lands," may, for the purpose of this memorandum, be considered to mean all lands in the province vested in the Crown of which no grant had been made.

A distinction is made between "unsurveyed land" and "surveyed land".

As to "unsurveyed land," it provides that any person qualified under that section may record any tract of unoccupied, unsurveyed and unreserved Crown lands (not being an Indian settlement) not exceeding the extent mentioned;

"Provided that such right shall not be held to extend to any of the aborigines of this continent, except to such as shall have obtained permission in writing to so record by a special order of the Lieutenant-Governor in Council."

The record is done by stating and marking out the boundaries of claim, and making a declaration in respect thereof.

As to "surveyed land," it is defined by 23rd section.

A provision is made by the 24th section as to who may pre-empt any tract of surveyed, unreserved, unoccupied and unrecorded land (not being an Indian settlement), and a similar proviso to that above mentioned prohibits the aborigines of the continent the right of pre-emption, except as before mentioned.

Such persons are pre-empt are known as "home settlers".

The undersigned deems it proper to notice that there is not in this Act any reservation of lands in favour of the Indians or Indian tribes of British Columbia; nor are the latter thereby accorded any rights or privileges in respect to lands, or reserves, or settlements.

On the contrary, the right to record unsurveyed land, or to pre-empt surveyed land, is expressly enacted not to extend to any of the aborigines, except such as shall have obtained permission in writing of the Lieutenant-Governor in Council.

Nor can the undersigned find that there is any legislation in force in British Columbia which provides reservations of lands for the Indians, the only ordinance in that respect being one of the 15th March, 1869, which speaks of Crown lands in the colony being Indian reserves or settlements.

The undersigned refers to the Order in Council, under which the province of British Columbia was admitted into the Dominion, and particularly the 13th section as to the Indians, which is as follows:—

"The charge of the Indians, and the trusteeship and management of the lands reserved for their use and benefit, shall be assumed by the Dominion government, and a policy as liberal as that hitherto, pursued by the British Columbia government shall be continued by the Dominion government after the union. To carry out such policy, tracts of land of such extent as it has hitherto been the practice of the British Columbia government to appropriate for that purpose, shall from time to time be conveyed by the local government to the Dominion government in trust for the use and benefit of the Indians on application of the Dominion government; and in case of disagreement between two governments respecting the quantity of such tracts of land to be so granted, the matter shall be referred for the decision of the Secretary of State for the Colonies."

The question as to the provision which has been made of reserves for the Indians, has been the subject of an Order of the Governor General in Council, dated 4th November, 1874, and it is not necessary, therefore, to enter upon a discussion of the merits of the case.

But having regard to the known, existing and increasing dissatisfaction of the Indian tribes of British Columbia at the absence of adequate reservation of lands for their use, and at the liberal appropriation for those in other parts of Canada upon surrender by treaty of their territorial rights, and the difficulties, which may arise from the not improbable assertion of that dissatisfaction by hostilities on their part, the undersigned deems it right to call attention to the legal position of the public lands of the province.

The undersigned believes that he is correct in stating, that with one slight exception as to land in Vancouver Island surrendered to the Hudson Bay Company, which makes the absence of others the more remarkable, no surrender of lands in that province has ever been obtained from the Indian tribes inhabiting it, and that any reservations which have been made, have been arbitrary on the part of the government, and without the assent of the Indians themselves, and though the policy of obtaining surrenders at this lapse of time and under the altered circumstances of the province, may be questionable, yet the undersigned feels it his duty to assert such legal or equitable claim as may be found to exist on the part of the Indians.

There is not a shadow of doubt, that from the earliest times, England has always felt it imperative to meet the Indians in council, and to obtain surrenders of tracts of Canada, as from time to time such were required for the purposes of settlements.

The 40th article of the treaty of capitulation of the city of Montreal, dated 8th September, 1760, is to the effect that,

"The savages or Indian allies of His Most Christian Majesty shall be maintained in the lands they inhabit if they chose to remain there."

The proclamation of King George III, 1763, erecting within the countries and islands ceded and confirmed to Great Britain by the treaty of the 10th February, 1763, four distinct governments, styled Quebec, East Florida, West Florida and Grenada, contains the following clauses:—

"And whereas, it is just and reasonable and essential to our interests and the security of our colonies, that the several nations or tribes of Indians with whom we are connected, and who live under our protection, should not be molested or disturbed in the possession of such parts of our dominions and territories, as not having been ceded to us, are reserved to them, or any of them as their hunting grounds; we do, therefore, with the advice of our Privy Council, declare it to be our royal will and pleasure that no governor or commander-in-chief, in any of our colonies of Quebec, East Florida or West Florida, do presume upon any pretense whatever to grant warrants of survey or pass any patents for lands beyond the boundaries of their respective governments, as described in their commissions; as also, that no governor or commander-in-chief of our other colonies or plantations in America, do presume for the present and until our future pleasure be known, to grant warrants of survey or pass any patents for lands beyond the heads or sources of any of the rivers which fall into the Atlantic Ocean from the west or northwest; or upon any lands whatever, which, not having been ceded to or purchased by us, as aforesaid, are reserved to the said Indians, or any of them; and we do further declare it to be our royal will and pleasure, for the present, as aforesaid, to reserve under our sovereignty, protection and dominion, for the use of the said Indians, all the land and territories not included within the limits, and territory granted to the Hudson Bay Company; as also all the land and territories laying to the westward of the sources of the rivers which fall into the sea from the west and northwest as aforesaid; and we do hereby strictly forbid, on pain of our displeasure, all our loving subjects from making any purchases or settlements, whatsoever, or taking possession of any of the lands above reserved without our special leave and license for that purpose first obtained. And we do further strictly enjoin and require all persons whatsoever, who have either wilfully or inadvertently seated themselves upon any land within the countries above described, or upon any other lands, which not having been ceded to or purchased by us, are still reserved to the said Indians as aforesaid, forthwith to remove themselves from such settlements.

And whereas great frauds and abuses have been committed in the purchasing lands of the Indians, to the great prejudice of our interests, and to the great dissatisfaction of the said Indians; in order, therefore, to prevent such irregularities for the future, and to the end that the Indians may be convinced of our justice and determined resolution to remove all reasonable cause of discontent, we do, with the advice of our Privy Council, strictly enjoin and require that no private person do presume to make any purchase from the said Indians of any lands reserved to the said Indians, within those parts of our colonies where we had thought proper to allow settlements; but if at any time any of the said Indians should be inclined to dispose of the said lands, the same shall be purchased only for us, in our name, at some public meeting or assembly of the said Indians, to be held for that purpose by the governor or commander-in-chief of our colony, respectively, within which they shall be; and in case they shall be within the limits of any proprietaries, conformable to such directions and instructions as we or they shall think proper to give for that purpose; and we do, by the advice of our Privy Council, declare and enjoin that the trade with the said Indians shall be free and open to all our subjects whatever; provided that every person who may incline to trade with the said Indians do take out a license for carrying on such trade from the governor or commander-in-chief of any of our colonies, respectively, where such person shall reside, and also give security to observe such regulations as we shall at any time think fit, by ourselves or commissaries to be appointed for this purpose, to direct and appoint for the benefit of the said trade; and we do hereby authorize, enjoin and require the governors and commanders-in-chiefs of all our

colonies, respectively, as well as those under our immediate government, as those under the government and direction of proprietaries, to grant such licenses without fee or reward, taking special care to insert therein a condition that such license shall be void, and the security forfeited, in case the person to whom the same is granted shall refuse or neglect to observe such regulations as we shall think proper to prescribe as aforesaid.

And we do further expressly enjoin and require all officers whatever, as well military as those employed in the management and direction of the Indian affairs within the territories reserved, as aforesaid, for the use of the said Indians, to seize and apprehend all persons whatever, who standing charged with treason, misprision of treason, murder or other felonies or misdemeanors, shall fly from justice and take refuge in the said territory, and to send them under a proper guard to the colony where the crime was committed, of which they shall stand accused, in order to take their trial for the same."

It is not necessary now to inquire whether the lands to the west of the Rocky Mountains and bordering on the Pacific Ocean, form part of the lands claimed by France, and which, if such claims were correct, would have passed by cession to England, under the Treaty of 1763, or whether the title of England rests on any other ground, nor is it necessary to consider whether that proclamation covered the land now known as British Columbia.

It is sufficient, for the present purposes, to ascertain the policy of England in respect to the acquisition of the Indian territorial rights, and how entirely that policy has been followed to the present time, except in the instance of British Columbia.

It is true, also, that the proclamation of 1763, to which allusion has been made, was repealed by the Imperial Statute 14 George III, chapter 83, known as The Quebec Act; but that statute merely, so far as regards the present case, annuls the proclamation, "so far as the same relates to the province of Quebec, and the commission and the authority thereof, under the authority whereof, the government of the said province is at present administered," and the Act was passed for the purpose of effecting a change in the mode of the civil government of the administration of justice in the province of Quebec.

The Imperial Act, 1821, 1st and 2nd George IV, chapter 66, for regulating the fur trade, and establishing a criminal and civil jurisdiction within certain parts of North America, legislates expressly in respect to the portion of this continent which is therein spoken of as "the Indian territories," and by the Imperial Act, 1849, 12 and 13 Victoria, chapter 48, "An Act to provide for the administration in Vancouver's Island." The last-mentioned Act is recited, and it is added on recital that "for the purpose of the colonization of that part of the said Indian territories called Vancouver's Island, it is expedient that further provision should be made for the administration of justice therein."

The Imperial Act 1858, 21 and 22 Victoria, chapter 98, "An Act to provide for the government of British Columbia," recites, "that divers of Her Majesty's subjects and others have by the license and consent of Her Majesty resorted to and settled on certain wild and unoccupied territories on the North-west coast of North America, now known as 'New Caledonia,' from and after the passing of the Act to be named British Columbia, and the islands adjacent," etc.

The determination of England, as expressed in the proclamation of 1763, that the Indians should not be molested in the possession of such parts of the dominions and territories of England as, not having been ceded to the King, and reserved to them, and which extended also to the prohibition of purchase of lands from the Indians, except only to the Crown itself—at a public meeting or assembly of the said Indians to be held by the governor or commander-in-chief—has, with slight alterations, been continued down to the present time, either as the settled policy of Canada, or by legislative provision of Canada to that effect, and it may be mentioned that in furtherance of that policy, so lately as in the

year 1874, treaties were made with various tribes of Indians in the North-west Territories, and large tracts of lands lying between the province of Manitoba and the Rocky Mountains were ceded and surrendered to the Crown upon conditions of which the reservation of large tracts for the Indians, and the granting of annuities and gifts annually, formed an important consideration; and in various parts of Canada, from the Atlantic to the Rocky Mountains, large and valuable tracts of land are now reserved for the Indians as part of their consideration of their ceding and yielding to the Crown their territorial rights in other portions of the Dominion.

Considering, then, these several features of the case, that no surrender or cession of their territorial rights whether the same be of a legal or equitable nature, has been ever executed by the Indian tribes of the province—that they allege that the reservations of land made by the Government for their use, have been arbitrarily so made, and are totally inadequate to their support and requirements, and without their assent—that they are not averse to hostilities in order to enforce rights which it is impossible to deny them, and that the Act under consideration not only ignores those rights, but expressly prohibits the Indians from enjoying the rights of recording or pre-empting lands, except by consent of the Lieutenant-Governor;—the undersigned feels that he cannot do otherwise than advise that the Act in question is objectionable, as tending to deal with lands which are assumed to be the absolute property of the province, an assumption which completely ignores, as applicable to the Indians of British Columbia, the honour and good faith with which the Crown has, in all other cases, since its sovereignty of the territories in North America, dealt with their various Indian tribes.

The undersigned would also refer to the British North America Act, 1867, section 109, applicable to British Columbia, which enacts in effect that all lands belonging to the province shall belong to the province, "subject to any trust existing in respect thereof, and to any interest, other than that of the province, in the same."

That which has been ordinarily spoken of as the "Indian title" must, of necessity, consist of some species of interest in the lands of British Columbia.

If it is conceded that they have not a freehold in the soil, but that they have an usufruct, a right of occupation or possession of the same for their own use, then it would seem that these lands of British Columbia are subject, if not to a "trust existing in respect thereof," at least "to an interest other than that of the province alone."

The undersigned, therefore, feels it incumbent on him to recommend that this Act should be disallowed, but suggests that such disallowance be postponed until the last day at which such can take place, with a view of communication on the subject with the Lieutenant-Governor of British Columbia.

It may be anticipated that no practical inconvenience can arise from its disallowance should such be necessary, as the previously existing Crown land Act will probably suffice to enable the province to continue, in the meantime, disposal of lands.

The undersigned, whilst commenting on this Act, deems it also expedient to call attention to that provision of the Order in Council under which the province of British Columbia entered confederation, which refers to the conveyance by the province to the Dominion government, in trust, of public lands along the line of the Pacific Railway, throughout the entire length of British Columbia. It may, of course, be argued that there has been no actual commencement, within two years of the date of the Union, of the Canadian Pacific Railway; but having regard to the practical commencement of that work in the surveys which have been made along different portions of the contemplated route, the undersigned deems it his duty to note that no reservations are made in the Act now under consideration, and that without them, the recording and pre-emption

of lands under this Act might be the subject of great embarrassment to the government of Canada, in the construction of the line or in the granting of any contracts for construction of portions of it.

He suggests, therefore, that this is a further subject on which it is desirable that communication should be had with the Lieutenant-Governor of British Columbia.

I concur,

T. FOURNIER, *Minister of Justice,*

H. BERNARD, *Deputy Minister of Justice.*

EXCERPT FROM DOMINION AND PROVINCIAL LEGISLATION, 1867-1895, Page 1038

REPORT OF THE HON. THE MINISTER OF JUSTICE, APPROVED BY HIS EXCELLENCY THE GOVERNOR GENERAL IN COUNCIL ON THE 6TH MAY, 1876.

DEPARTMENT OF JUSTICE,
OTTAWA, 28th April, 1876.

With reference to the Acts of British Columbia assented to on the 22nd April, 1875, the time for action upon which will expire on the 8th May next the undersigned begs to report as follows:

1. By minute in council of the 16th October, 1875, the report of the undersigned upon the Act chapter 5, intituled: "An Act to make provision for the better Administration of Justice," was approved.

A copy of that minute was transmitted to the Lieutenant-Governor of British Columbia.

The views of the government of British Columbia not having been communicated to His Excellency, the Secretary of State recently asked for a telegraphic communication upon the subject.

By telegraph, dated 27th April from the Lieutenant-Governor to the Secretary of State, he is informed that the Government of British Columbia concurs in the disallowance of the Act for the better Administration of Justice; that the general question involved therein is now under consideration, and a bill reorganizing the system will, if time admit, be submitted to the legislature.

The report of the undersigned proposed that it should be suggested to the government of British Columbia to repeal the Act, and to effect the division of the province into districts, etc., by legislation, instead of by the machinery proposed by the Act.

As the provincial government suggests the exercise of the power of disallowance, and it is not certain whether amendatory legislation will be held this session, the undersigned recommends that the said Act be disallowed.

2. By minute in council of the 10th November, 1875, the report of the undersigned upon the Act, intituled: "An Act to amend and consolidate the laws respecting Crown Lands in British Columbia," was approved.

The same steps were subsequently taken upon this subject, as those detailed with reference to the subject treated of in the first paragraph.

The Lieutenant-Governor's communication upon this Act states that the objections taken by council to it are considered to be removed by the agreement for a settlement of the Indian land question by commissioners.

Although the undersigned cannot concur in the view that the objections taken are entirely removed by the action referred to; and, though he is of opinion that, according to the determination of council upon the previous Crown Lands Act, there remains serious question as to whether the Act now under consideration is within the competence of the provincial legislature, yet

since according to the information of the undersigned, the statute under consideration has been acted upon, and is being acted upon largely in British Columbia, and great inconvenience and confusion might result from its disallowance; and considering that the condition of the question at issue betweeen the two governments is very much improved since the date of his report, the undersigned is of opinion that it would be the better course to leave the Act to its operation.

It is to be observed that this procedure neither expresses nor impliedly waives any right of the government of Canada to insist that any of the provisions of the Act are beyond the competence of the Local Legislature, and are consequently inoperative.

The undersigned recommends that the Act be left to its operation.

3. By minute in council of the 7th January, 1876, the report of the undersigned respecting an Act, intituled: "An Act to make Powers of Attorney valid in certain cases," was approved.

The same steps were subsequently taken upon this subject as those detailed with reference to the subjects treated of in the first paragraph.

The Lieutenant-Governor's communication upon this Act states that it will be immediately amended, to remove the objections taken to section 7, which was the only clause objected to. Upon this assurance of the government of British Columbia, the undersigned recommends that the Act be left to its operation.

EDWARD BLAKE,
Minister of Justice.

APPENDIX C

EXCERPT FROM BRITISH COLUMBIA PAPERS RELATING TO THE INDIAN LANDS QUESTION 1875-1878. Page 160

Copy of a Report of a Committee of the Honourable the Privy Council, approved by His Excellency the Governor General in Council, on the 10th November, 1875.

The Committee of Council have had under consideration the Minute in Council of the Government of British Columbia of the 18th August last, adopting the recommendations contained in a Memorandum of the local Attorney-General, as the expression of the views of that Government as to the best method of bringing about a settlement of the Indian Land question, and submitting those recommendations for the consideration and assent of the Government of the Dominion.

They have also had before them the Memorandum herewith annexed, from the Honourable Mr. Scott, acting in the absence of the Honourable the Minister of the Interior, to whom the above-mentioned documents were referred, and they respectfully report their concurrence in the recommendations therein submitted, and advise that a copy thereof and of this Minute be transmitted for the consideration of the Government of British Columbia.

Certified.

(Signed) W. A. HIMSWORTH,
Clerk, Privy Council, Canada.

DEPARTMENT OF THE INTERIOR,

OTTAWA, 5th November, 1875.

Memorandum:

The undersigned has had under consideration the Report of the Executive Council of the 18th of August last, adopting the recommendations contained in Memorandum of the local Attorney-General, the Honourable George A. Walkem, as the expression of the views of that Government as to the best method of bringing about a settlement of the Indian Land question, and submitting those recommendations for the consideration and assent of the Government of the Dominion.

The action of the British Columbia Government in this matter was no doubt brought about by the Order of Your Excellency in Council of the 4th November, 1874, on the subject of the Indian Reserves of British Columbia, which was communicated officially to the British Columbia Government by the Secretary of State.

The suggestions contained in Mr. Walkem's Memorandum, and adopted by the Order in Council of the British Columbia Government, are as follows:—

1. That no basis of acreage for Indian Reserves be fixed for the Province as a whole, but that each nation (and not tribe) of Indians of the same language be dealt with separately.

2. That for the proper adjustment of Indian claims the Dominion Government do appoint an agent to reside with each nation.

3. That Reserves of land be set aside for each nationality of Indians; such Reserve to contain, in addition to agricultural land, a large proportion of wild and forest land. Every application for a Reserve shall be accompanied by a Report from the agent having charge of the nation for whom the Reserve is

intended; and such Report shall contain a census and give a description of the habits and pursuits of each nation and also of the nature and quantity of the land required for the use of such nation.

4. That each Reserve shall be held in trust for the use and benefit of the nation of Indians to which it has been allotted, and, in the event of any material increase or decrease hereafter of the members of a nation occupying a Reserve, such Reserve shall be enlarged or diminished as the case may be, so that it shall bear a fair proportion to the numbers of the nation occupying it. The extra land required for any Reserve shall be allotted from vacant Crown Lands, and any land taken off a Reserve shall revert to the Province.

5. That the present local Reserves be surrendered by the Dominion to the Province as soon as may be convenient, the Province agreeing to give fair compensation for any improvements or clearings made upon any Reserve which may be surrendered by the Dominion and accepted by the Province.

The suggestions in question are stated by Mr. Walkem as having been made by Mr. Duncan, in a letter which is appended to the Order in Council.

The undersigned would remark that the suggestions, as given by Mr. Duncan in the letter in question, do not correspond precisely with the propositions formulated by Mr. Walkem.

Mr. Duncan's suggestions are as follows:—

1. That no basis of acreage for Reserves be fixed for the Province as a whole, but rather that each nation of Indians be dealt with separately on their respective claims.

2. That for the proper adjustment of such claims let the Dominion and the Provincial Governments each provide an agent to visit the Indians and report fully as to the number and pursuits of each nation and the kind of country they severally occupy.

3. That the Provincial Government deal as liberally with the Indians as other Provincial Governments in the Dominion.

My opinion is that a liberal policy will prove the cheapest in the end, but I hold it will not be necessary in the interests of the Indians to grant them only cultivable lands; rather I would recommend that a large portion of their Reserves should be wild and forest lands, and hence may be very extensive without impoverishing the Province, and at the same time so satisfactory to the Indians as to allay all irritation and jealousy towards the whites.

4. I think the Provincial Government might reasonably insist upon this with the Dominion Government: That no Indian shall be allowed to alienate any part of a Reserve, and in case of any Reserve being abandoned, or the Indians on it decreasing, so that its extent is disproportioned to the number of occupants, that such Reserve or part of a Reserve might revert to the Provincial Government.

Mr. Duncan adds: "The existing Reserves are shown to be, by the correspondence, both irregular in quantity and misplaced as to the locality, by following tribal divisions, which is no doubt a mistake and fraught with bad consequences.

My advice would be, in the meantime simply to ignore them, as it certainly would not be wise to regard them as a precedent, and it would be impolitic to have two systems of Reserves in the Province, one tribal and the other national."

It will be observed that Mr. Walkem speaks of the appointment of an agent by the Dominion Government whereas Mr. Duncan proposes that the Dominion and Provincial Governments shall each provide an agent to visit the Indians and report upon the question of Reserves.

While the undersigned is of opinion that in view of the very large experience Mr. Duncan has had amongst the Indians of British Columbia, and the marvellous success which has attended his labour amongst them, that gentleman's

suggestions on matters of Indian policy are entitled to the greatest weight, and, while he concurs entirely in the general principles enunciated by Mr. Duncan yet he thinks that both the suggestions of Mr. Duncan and the propositions of Mr. Walkem, adopted by the Government of British Columbia in their Minute of 8th August last, fail to provide a prompt and final settlement of this long-pending controversy.

Mr. Walkem provides merely that the agent shall make an application for a Reserve and report upon the subject, and Mr. Duncan recommends that the Dominion and Provincial agents shall report merely as to the number and pursuits of the Indians. Looking to Mr. Walkem's admission "that the Indians have undoubtedly become discontended, and that they are restless and uneasy as to their future," and to his further statement "that the Local Government have been keenly alive not only to the advantage but to the absolute necessity and urgent importance of a speedy settlement of all the questions connected with their Reserves," and again to Mr. Duncan's expression of opinion as to "the urgency and importance of the land question and its vital bearing on the peace and prosperity of the Province," the undersigned submits that no scheme for the settlement of this question can be held to be satisfactory which does not provide for its prompt and final adjustment.

In lieu, therefore, of the propositions submitted by Mr. Walkem and sanctioned by the Order in Council of the British Columbia Government, the undersigned would respectfully propose the following:

1. That with the view to the speedy and final adjustment of the Indian Reserve question in British Columbia on a satisfactory basis, the whole matter be referred to three Commissioners, one to be appointed by the Government of the Dominion, one by the Government of British Columbia, and the third to be named by the Dominion and the Local Governments jointly.

2. That the said Commissioners shall, as soon as practicable after their appointment, meet at Victoria, and make arrangements to visit, with all convenient speed, in such order as may be found desirable, each Indian nation, (meaning by nation all Indian tribes speaking the same language) in British Columbia, and, after full enquiry on the spot into all matters affecting the question to fix and determine for each nation, separately, the number, extent, and locality of the Reserve or Reserves to be allowed to it.

3. That in determining the extent of the Reserves to be granted to the Indians of British Columbia, no basis of acreage be fixed for the Indians of that Province as a whole, but that each nation of Indians of the same language be dealt with separately.

4. That the Commissioners shall be guided generally by the spirit of the Terms of Union between the Dominion and the Local Governments, which contemplates a "liberal policy" being pursued towards the Indians, and, in the case of each particular nation, regard shall be had to the habits, wants and pursuits of such nation, to the amount of territory available in the region occupied by them, and to the claims of the white settlers.

5. That each Reserve shall be held in trust for the use and benefit of the nation of Indians to which it has been allotted, and, in the event of any material increase or decrease hereafter of the numbers of a nation occupying a Reserve, such Reserve shall be enlarged or diminished, as the case may be, so that it shall bear a fair proportion to the members of the nation occupying it. The extra land required for any Reserve shall be allotted from Crown Lands, and any land taken off a Reserve shall revert to the Province.

6. That so soon as the Reserve or Reserves for any Indian nation shall have been fixed and determined by the Commissioners as aforesaid, the existing Reserves belonging to such nation, so far as they are not in whole or in part included in such new Reserve or Reserves so determined by the Commissioners, shall be surrendered by the Dominion to the Local Government so soon as may

be convenient, on the latter paying to the former for the benefit of the Indians, such compensation for any clearings or improvements made on any Reserve so surrendered by the Dominion and accepted by the Province, as may be thought reasonable by the Commissioners aforesaid.

It will be observed that the preceding paragraphs, Nos. 3, 4, 5 and 6, are substantially the same as those submitted in the Memorandum of Mr. Walkem, approved by the Order in Council of the British Columbia Government.

The undersigned would further recommend that each Commissioner be paid by the Government appointing him, and that the third Commissioner be allowed ten dollars per day while acting, and that his pay and other expenses be borne equally by the Dominion and the Local Governments; and the undersigned would further recommend that if this Memorandum be approved by Your Excellency, a copy thereof and of the Minute of Council passed thereon be communicated to His Honour the Lieutenant-Governor of British Columbia for the consideration of His Government, and that another copy be placed in Your Excellency's hands for transmission to the Right Honourable the Secretary of State for the Colonies.

The whole respectfully submitted.

(Signed) R. W. SCOTT,
Acting Minister of the Interior.

APPENDIX D

DEPARTMENT OF INDIAN AFFAIRS—EXPENDITURE IN BRITISH COLUMBIA

Year	Salaries	Relief	Aid to Agriculture and cleansing Orchards from 1918	Med. and Hosp.	Education	Travelling Expenses	Miscellaneous	B. C. Land Question	Surveys, Roads and Irrigation from 1922	Indian Reserve Commission	Total
	$ cts.	$ cts.	$ cts.	$ cts.	$ cts.	$ cts.	$ cts.	$ cts.	$ cts.	$ cts.	$ cts.
1871–72											500 00
73	1,685 06	1,296 01	77 36	729 63		1,779 45	1,520 26		398 00		7,485 77
74	4,252 16	551 22	1,587 19	907 46	1,315 95	4,035 81	3,294 26		1,595 75		17,539 80
75	6,973 24	3,458 85	5,918 13	1,288 80	2,474 47	5,863 65	1,699 12		5,171 57		32,847 83
76	6,671 33	2,668 77	2,112 18	5,960 98	1,782 50	746 00	1,850 47				21,792 23
77	8,399 49	3,930 75	5,215 36	6,722 53	1,238 25	1,038 83	3,843 12		109 68	13,632 12	44,130 13
78	7,742 22	2,560 10	5,033 75	3,425 75	1,650 00	1,434 33	1,497 82		4,814 16	15,923 71	44,081 84
79	8,412 00	2,718 37	5,231 06	2,645 56	1,677 50	120 83	707 21		11,593 91	15,425 12	48,531 56
1879–80	6,917 04	2,710 70	832 73	2,753 16	2,127 00	651 93	1,628 50		11,008 54	12,771 55	41,401 15
81	9,545 26	1,584 94	1,980 55	2,488 25	2,405 50	1,249 39	2,774 37		9,658 37	10,631 33	42,317 96
82	11,895 00	844 60	1,081 97	2,198 19	826 01	4,121 14	1,752 44		7,468 80	10,145 60	40,333 75
83	12,782 70	2,642 58	1,351 18	3,357 36	1,831 05	2,725 78	2,902 88		8,631 89	7,506 13	43,731 55
84	15,046 19	1,449 62	201 99	1,984 86	1,313 72	3,441 75	3,943 71		12,300 26	6,209 02	45,891 12
85	16,843 61	1,197 78	1,117 86	2,815 28	2,798 24	3,989 35	2,690 52		11,836 31	8,700 00	51,988 95
86	16,760 67	852 78	1,382 53	2,460 08	2,784 46	3,531 25	4,186 53		10,075 39	6,250 00	48,283 69
87	18,629 67	1,009 94	1,091 55	3,367 78	3,565 09	5,190 55	2,308 65		16,951 31	9,235 73	61,345 27
88	20,619 64	1,926 94	1,521 50	4,703 00	2,388 65	6,576 00	5,708 58		16,229 87	7,160 02	66,834 20
89	20,266 92	5,504 88	1,231 20	8,051 56	12,724 43	4,981 95	6,943 05		12,407 61	10,811 58	82,923 18
1889–90	21,672 37	3,834 36	1,419 37	6,797 88	40,496 15	4,146 38	4,825 26		9,541 28	9,341 39	102,074 44
91	20,853 66	3,372 27	1,359 57	7,791 77	28,564 56	4,938 47	2,938 93		8,909 66	6,326 04	85,054 93
92	22,556 29	5,443 73	1,077 31	4,927 18	29,402 72	5,340 55	3,252 88		9,576 29	8,444 84	90,021 79
93	24,485 26	3,564 86	430 24	11,501 36	39,676 38	5,396 94	3,893 38		9,646 37	8,243 46	106,838 25
94	17,820 20	6,656 87	1,165 47	13,600 00	41,313 33	4,198 86	5,499 57		9,654 65	7,172 70	107,081 65
95	17,505 61	4,664 57	1,595 25	9,995 62	41,872 83	4,405 31	5,372 28		10,167 00	5,957 53	101,536 00
96	17,727 50	2,812 50	291 83	8,185 18	46,739 23	4,245 33	5,771 99		2,268 29	3,500 00	91,541 85
97	18,540 38	3,081 48	1,168 81	6,011 80	48,226 67	3,342 91	6,234 85			5,703 24	92,310 14
98	18,319 91	3,550 12	886 34	10,033 84	55,957 20	4,002 47	11,576 81			8,609 20	112,935 89
99	19,549 96	3,032 43	393 70	9,342 99	60,092 12	3,530 82	8,337 84			5,515 86	109,795 72
1899–00	19,050 00	4,626 81	701 80	10,060 45	59,506 64	3,961 31	11,032 76			5,938 38	114,878 15
01	19,838 84	4,571 31	847 44	10,998 33	62,507 63	5,064 27	8,388 60			7,226 36	119,442 78
02	19,919 99	6,499 38	510 50	20,468 43	63,205 99	5,269 55	9,809 86			3,825 20	129,508 90
03	19,083 64	8,767 67	153 20	18,341 45	75,156 75	4,676 63	7,383 23			4,653 71	138,216 28
04	20,735 82	7,182 47	416 77	15,543 44	75,778 06	5,695 43	9,986 52			2,257 51	137,596 02

05	21,320 00	8,002 84	276 15	17,407 59	80,906 23	5,189 20	14,356 53			1,390 11	148,848 65
06	23,404 24	7,246 10	544 51	20,709 08	89,710 96	5,843 39	13,268 38			1,100 20	161,826 86
07	18,155 00	5,760 25	722 82	15,204 22	64,078 43	4,747 42	12,768 86			105 75	121,542 75
08	24,185 66	11,271 16	352 00	23,206 15	85,883 36	6,839 14	19,001 97			2,948 96	173,688 40
09	24,815 00	9,795 68	1,003 09	33,515 07	83,895 24	7,124 20	24,125 47			1,681 57	185,955 32
1909–10	26,008 33	10,399 43	1,870 61	30,970 96	85,340 06	7,021 46	18,307 92			1,109 92	181,028 69
11	34,432 29	13,831 18	755 71	33,659 46	105,273 86	9,564 36	19,256 11			1,336 85	218,109 82
12	28,230 34	13,121 83	1,486 38	30,153 13	178,314 13	11,738 40	21,192 85		4,891 35		289,128 41
13	34,277 30	12,660 83	9,223 97	34,948 86	190,614 09	16,608 86	18,991 70	3,895 28	5,268 05		326,488 94
14	35,284 18	23,553 59	7,642 31	43,877 50	143,746 25	18,640 08	27,954 31	49,254 32	722 38		350,674 92
14–15	42,332 58	26,678 63	8,299 75	53,279 32	199,943 20	26,001 15	20,624 57	64,606 26	1,418 20		443,183 66
15–16	43,094 26	29,863 54	12,265 40	51,222 22	195,245 35	21,231 95	19,353 81	44,301 02	869 10		417,446 65
16–17	42,730 68	25,702 06	5,748 63	54,683 02	169,784 90	15,404 86	16,528 78	24,820 46	1,393 15		356,796 54
17–18	43,735 87	27,204 10	7,560 47	55,258 67	159,538 68	16,927 23	8,471 12		6,892 00		325,588 14
18–19	42,444 58	31,923 50	13,798 87	52,525 20	175,797 02	24,308 46	8,442 46		1,698 30		350,938 39
19–20	44,969 30	32,765 05	4,829 73	54,703 97	176,346 64	24,448 77	13,291 27		831 70		352,186 43
1920–21	47,253 62	33,682 46	5,104 15	74,010 55	318,042 58	26,026 91	23,409 10		1,252 55		528,781 92
1921–22	67,792 18	31,037 82	5,711 34	88,210 43	478,643 66	21,109 26	26,786 21		754 50		720,045 40
1922–23	65,254 89	36,512 68	4,809 69	89,940 11	354,791 76	28,080 53	41,260 85		720 00		621,370 51
1923–24	65,679 10	29,631 72	6,397 10	83,350 03	492,493 05	30,536 13	20,717 75		13,552 58		742,357 46
1924–25	66,013 32	34,614 59	6,744 86	101,676 99	422,151 43	34,354 05	16,022 88		31,258 48		712,836 60
1925–26	71,944 95	37,963 61	8,348 36	102,375 48	380,930 09	26,311 10	19,961 49		42,848 06		690,683 14
Total	1,400,459 30	601,787 31	162,881 59	1,364,347 96	5,442,870 05	507,750 13	578,150 64	186,877 34	314,385 36	236,790 69	10,800,300 37

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APPENDIX E

P. C. 1081

Certified Copy of a Report of the Committee of the Privy Council, approved by His Excellency the Governor General on the 17th May, 1911.
Privy Council, Canada.

The Committee of the Privy Council have had before them a report, dated 11th May, 1911, from the Minister of Justice, stating, with reference to Lord Crewe's despatch of the 31st March, 1909, and the subsequent correspondence with regard to the claims of the British Columbia Indians, that no settlement of these claims has yet been reached, and that Your Excellency's Government and the Government of British Columbia in the negotiations which have subsequently taken place have failed to conclude any arrangement for the determination of the question involved.

The Minister further states that it is now proposed, therefore, on the part of Your Excellency's Government, to institute proceedings in the Exchequer Court of Canada on behalf of the Indians against a provincial grantee, or licensee, in the hope of obtaining a decision upon the questions involved as soon as a case arises in which the main points in difference can be properly or conveniently tried.

That meantime the Indians and their friends are pressing the Government to make representations on the subject to the Colonial Office, and recently a memorial has been handed in, signed by the Rev. A. E. O'Meara, on behalf of the Conference of the Friends of the Indians of British Columbia, copy of which together with copies of the documents therein referred to, are herewith submitted.

That the statement of facts contained in Mr. O'Meara's memorandum is, so far as it is within the knowledge of the Minister, substantially correct.

The Committee, on the recommendation of the Minister of Justice, advise that Your Excellency may be pleased to transmit a copy hereof, together with the several documents referred to herein, to the Right Honourable the Principal Secretary of State for the Colonies.

All which is respectfully submitted for approval.

(Sgd.) F. K. BENNETT,
Asst. Clerk of the Privy Council.

Copy 59335-2
Privy Council
Canada

(Annex to P.C. 1081, Order in Council, dated 17th May, 1911.)

BRITISH COLUMBIA INDIAN LAND SITUATION

Memorandum for the Government of Canada

Statement of Facts

1. By a petition which in March, 1909, was presented to His Majesty and the Colonial Office and in April, 1909, was forwarded to His Excellency the Governor General with request that he secure a report thereon from his Ministers, and by a resolution adopted at a general meeting held at the City of Vancouver in September, 1909, the Indian Tribes of the Province of British

Columbia asked the Imperial Government to submit their claim directly to the Judicial Committee of His Majesty's Privy Council and asked the Government of Canada to facilitate the securing of such submission.

2. In January, 1910, the Indian Tribes placed in the hands of the Department of Justice a "Statement of Facts and Claims."

3. It is understood that, after full consideration of the above mentioned documents, the Department of Justice came to the conclusion that existing conditions render necessary the securing of the judicial decision desired by the Indians and so advised.

4. It is understood that, the advice so given having been approved and adopted, it was and is the desire of the Government of Canada that such decision should be secured by means of a reference to the Supreme Court of Canada and with the consent and concurrence of the Government of British Columbia.

5. It is understood that the Government of Canada entered into negotiations with the Government of British Columbia, for the purpose of obtaining such consent and concurrence, and in May, 1910, the Deputy Minister of Justice and the Deputy Attorney General of the Province of British Columbia met at the City of Ottawa and prepared ten questions for submission to the Supreme Court of Canada with a view to their being carried to the Judicial Committee of the Privy Council. Of these the first three related to the general matter of Indian title and the remaining seven related to matters connected with lands reserved for the Indians. The said ten questions as finally drawn by the Deputy Minister of Justice were approved by the Deputy Attorney General and by Counsel for the Province of British Columbia and were subsequently submitted to and approved by Counsel for the Indian tribes.

6. It is understood that, when the said ten questions were submitted to the Government of British Columbia for final action, that Government objected to the first three of the said questions and expressed unwillingness to proceed with the proposed reference unless those three questions were omitted.

7. In the month of August, 1910, at the City of Victoria "The Conference of Friends of the Indians of British Columbia," an organization formed in the month of March, 1910, presented a memorial to the Prime Minister of Canada.

8. On 23rd September, 1910, the Moral and Social Reform Council of Canada assembled in annual meeting at the City of Toronto passed the following resolution:—

> In view of the national importance of securing full justice for the native race in all parts of Canada, this Council, while not expressing an opinion upon the merits of the claims now being made by the Indian Tribes of British Columbia, expressed its sympathy with the aims of the Conference of Friends of the Indians of British Columbia in seeking to bring about as rapidly as possible a just and advantageous solution of the problems presented by existing conditions in that Province, and its sense of the great importance of accomplishing that object. This Council expresses the hope that the Governments concerned will facilitate a prompt and final settlement of the whole question of the Indian title. It is further resolved that the members of the delegation already appointed be authorized to present this resolution to the Prime Minister of Canada and the Superintendent-General of Indian Affairs.

9. On 6th October, 1910, in pursuance of the Memorial and Resolution above mentioned, a delegation representing both the Friends of the Indians of British Columbia and the Moral and Social Reform Council of Canada waited upon the Prime Minister of Canada and the Superintendent-General of Indian Affairs, who were accompanied by the Deputy Minister of Justice. A copy of the report of that interview prepared by the delegation is in the hands of the Government.

10. In pursuance of the recommendation of the Prime Minister set out in the above mentioned report, a delegation from the Friends of the Indians of

British Columbia on 14th December, 1910, at the City of Victoria waited upon the Government of British Columbia. A copy of the stenographic report of the Interview prepared under instructions of the Premier of British Columbia is in the hands of the Government.

11. On 23rd December, 1910, the Premier of British Columbia addressed to the Chairman of the Friends of the Indians of British Columbia the formal answer, copy of which is in the hands of the Government.

12. On 20th February last the Chairman of the Friends of the Indians of British Columbia addressed to the Premier of British Columbia the reply, copy of which is in the hands of the Government.

13. On the 1st, 2nd and 3rd of March last, ninety-six Indians, delegates representing a large number of the tribes of British Columbia, assembled at the City of Victoria and on the 3rd of March waited in a body upon the Government of British Columbia and presented to that Government the statement, copy of which is in the hands of the Government.

14. A copy of the stenographic report of the interview had upon that occasion prepared under the instruction of the Premier of British Columbia is in the hands of the Government.

15. On the 26th April last a delegation representing both the Friends of the Indians of British Columbia and the Moral and Social Reform Council of Canada waited upon the Prime Minister of Canada, the Superintendent-General of Indian Affairs, and the Minister of Justice.

A copy of the stenographic report of the interview is in the hands of the Government.

Statement of Request

1. That as soon as conveniently possible there be sent to the Imperial Government a full report of the whole matter including the facts above stated.

2. That with such report there be sent copies of the documents mentioned in the above statement.

3. That all matters contained and views expressed in those documents be submitted for the consideration of His Majesty and the Colonial Office and for such action as may be deemed wise.

4. That together with the foregoing there be sent a report of the Government of Canada regarding the Petition of the Indians as requested by the Imperial Government in April, 1909.

All of which is respectfully submitted on behalf of the "Conference of Friends of the Indians of British Columbia".

(Sgd.) A. E. O'MEARA.

OTTAWA, 3rd May, 1911.

APPENDIX F

Privy Council
Canada

"A"

P.C.751.

Certified Copy of a Report of the Committee of the Privy Council, approved by His Royal Highness the Governor General on the 20th June, 1914.

The Committee of the Privy Council have had before them a Report from the Superintendent General of Indian Affairs, dated 11th March, 1914, submitting the accompanying memorandum from the Deputy Superintendent General of Indian Affairs upon the Indian claim to the lands of the Province of British Columbia, in which he concurs.

The Committee, on the recommendation of the Superintendent General of Indian Affairs, advise that the claim be referred to the Exchequer Court of Canada with the right of appeal to the Privy Council under the following conditions:—

1. The Indians of British Columbia shall, by their Chiefs or representatives, in a binding way, agree, if the Court, or on appeal, the Privy Council, decides that they have a title to lands of the Province, to surrender such title, receiving from the Dominion benefits to be granted for extinguishment of title in accordance with past usage of the Crown in satisfying the Indian claim to unsurrendered territories, and to accept the finding of the Royal Commission on Indian Affairs in British Columbia as approved by the Governments of the Dominion and the Province as a full allotment of Reserve lands to be administered for their benefit as part of the compensation.

2. That the Province of British Columbia by granting the said reserves as approved shall be held to have satisfied all claims of the Indians against the Province.

   That the remaining considerations shall be provided and the cost thereof borne by the Government of the Dominion of Canada.

3. That the Government of British Columbia shall be represented by counsel, that the Indians shall be represented by counsel nominated and paid by the Dominion.

4. That, in the event of the Court or the Privy Council deciding that the Indians have no title in the lands of the Province of British Columbia, the policy of the Dominion towards the Indians shall be governed by consideration of their interests and future development.

All which is respectfully submitted for approval.

RODOLPHE BOUDREAU,
Clerk of the Privy Council.

The Honourable
The Superintendent General of Indian Affairs.

DEPARTMENT OF INDIAN AFFAIRS, CANADA,
OTTAWA, March 11, 1914.

The Honourable
The Superintendant General of Indians Affairs.

The undersigned has given consideration to the petition of the Nishga Indians to the Privy Council, with reference to the alleged claim of those Indians to title in the lands of British Columbia and to a like claim on the part of the other Indians of the Province. I find indications in the papers that the Government is not unwilling to submit this claim to the courts, but the difficulties which are inherent in the claim and which may have prevented its submission have so far not been overcome; the two main difficulties would appear to be:—

1. The refusal of British Columbia to consent to a stated case which would include any reference to the Indian title.

2. Uncertainty as to the extent of compensation which might be demanded by the Indians if they were successful before the courts and if the Crown found it good policy to extinguish the title of the Indians.

With reference to the first difficulty I would propose that it be held that British Columbia has fully discharged its obligation to the natives by granting from the public domain of the Province reserve lands to be administered exclusively for their benefit, and that, if the Indian claim is found valid by the Court or the Privy Council, and, if it is thought advisable to offer anything further for extinguishment of title, the Dominion should assume the burden and compensate the Indians according to the past usage in such arrangements as have been made by the good-will of the Crown with the aborigines. The Dominion has interest in the lands in the Railway belt, and, to this extent, would benefit by extinguishment of the Indian title.

There are two Indian treaties which might be taken as prototypes for this divided responsibility, namely, the Treaty known as the Northwest Angle Treaty No. 3, and Treaty No. 9; both of these treaties are within the Province of Ontario. The first was negotiated when the Dominion Government thought the territory covered belonged to the Dominion. When by settlement of the boundary question it was discovered that most of the territory lay in Ontario, the Dominion claimed from Ontario for past expenditure and for the discharge of future liabilities. The case went to the courts and was decided in favour of Ontario. Ontario thereupon expressed her willingness to grant the reserves, and the Dominion bears the financial outlay for annuities and the other considerations.

Treaty No. 9 formed the subject of an agreement between the Governments of the Dominion and the Province of Ontario. Ontario agreed to furnish reserves and pay the annuities; the Dominion was to bear the cost of administration, education and the other provisions of the treaty.

Dealing with the second difficulty,—it would be a serious matter if the Dominion were to assume the undetermined liability which might arise if the Indians' claim were upheld by the courts. The erroneous view of the Indians as regards the nature of the aboriginal title is shown by a memorandum from the Nishga Nation, of which I attach a copy. I may quote here the sentences bearing on this point:—

"Some of the advantages to be derived from establishing our aboriginal rights are:—

1. That it will place us in a position to reserve for our own use and benefit such portions of our territory as are required for the future well-being of our people.

2. That it will enable us to a much greater extent and in a free and independent manner to make use of the fisheries and other natural resources pertaining to our territory."

* * * * *

"We cannot prevent the Province from persisting in this attempt, but we can and do respectfully declare that we intend to persist in making our claim against the Province of British Columbia for the following among other reasons."

* * * * *

"4. While we claim the right to be compensated for those portions of our territory which we may agree to surrender, we claim as even more important the right to reserve other portions permanently for our own use and benefit, and beyond doubt the portions which we would desire so to reserve would include much of the land which has been sold by the Province.

We are not opposed to the coming of the white people into our territory, provided this be carried out justly and in accordance with the British principles embodied in the Royal Proclamation. If, therefore, as we expect, the oboriginal rights which we claim should be established by the decision of His Majesty's Privy Council, we would be prepared to take a moderate and reasonable position. In that event, while claiming the right to decide for ourselves the terms upon which we would deal with our territory, we would be willing that all matters outstanding between the Province and ourselves should be finally adjusted by some equitable method to be agreed upon which should include representation of the Indian Tribes upon any Commission which might then be appointed."

From these words it will become apparent what fancies occupy the minds of the Indians when they think of the aboriginal title and its purchase.

The Privy Council, to which the Nishga Nation desire to appeal, has already pronounced upon the nature of the Indian title, describing it as "a personal and usufructuary right dependent upon the good-will of the Sovereign."

It follows that the Indian title, when acknowledged by the Crown, cannot be separated from what the Crown elects to grant. In appraising the Indian title we should go back to the time when the lands were a wilderness, when we find a wild people upon an unimproved estate. The Indian title cannot increase in value with civilized development; cession of Indian territory has always preceded the settlement of the country and whatever has been granted for the transfer has represented the good-will of the Crown, not the intrinsic value of the land at the time of the cession, and assuredly not the value enhanced by the activities of a white population. From the earliest times this beneficial interest has ever been appraised by the Crown, the Indians accepting what was offered, with, upon occasion, slight alterations in terms previously fixed by the Crown. It is optional when, if at all, the Crown may proceed to extinguish the Indian title, and, therefore, if it is decided that the Indians of British Columbia have a title of this nature, there can be no claim for deferred benefit from the Crown.

I would, therefore, propose that the claim be referred to the Exchequer Court, with right of appeal to the Privy Council upon the following conditions:—

1. That the Indians of British Columbia shall, by their Chiefs or representatives, in a binding way, agree, if the Court, or, on appeal, the Privy Council, decides that they have a title to lands of the Province, to surrender such title, receiving from the Dominion benefits to be granted for extinguishment of title in accordance with past usuage of the Crown in satisfying the Indian claim to unsurrendered territories, and to accept the finding of the Royal Commission on Indian Affairs in British Columbia, as approved by the Governments of the Dominion and the Province, as a full allotment of Reserve lands to be administered for their benefit as part of the compensation.

2. That the Province of British Columbia by granting the said reserves as approved shall be held to have satisfied all claims of the Indians against the Province.

That the remaining considerations shall be provided and the cost thereof borne by the Government of the Dominion of Canada.

3. That the Government of British Columbia shall be represented by counsel, that the Indians shall be represented by counsel nominated and paid by the Dominion.

4. That in the event of the Court or the Privy Council deciding that the Indians have no title in the lands of the Province of British Columbia, the policy of the Dominion towards the Indians shall be governed by consideration of their interests and future development.

DUNCAN C. SCOTT,
Deputy Superintendent General.

STATEMENT OF THE NISHGA NATION OR TRIBE OF INDIANS

From time immemorial the Nishga Nation or Tribe of Indians possessed, occupied and used the territory generally known as the Valley of the Naas River, the boundaries of which are well defined.

The claims which we make in respect of this territory are clear and simple, We lay claim to the rights of men. We claim to be aboriginal inhabitants of this country and to have rights as such. We claim that our aboriginal rights have been guaranteed by Proclamation of King George Third and recognized by Acts of the Parliament of Great Britain. We claim that holding under the words of that Proclamation a tribal ownership of the territory, we should be dealt with in accordance with its provision, and that no part of our lands should be taken from us or in any way disposed of until the same has been purchased by the Crown.

By reason of our aboriginal rights above stated, we claim tribal ownership of all fisheries and other natural resources pertaining to the territory above-mentioned.

For more than twenty-five years, being convinced that the recognition of our aboriginal rights would be of very great material advantage to us and would open the way for the intellectual, social and industrial advance of our people, we have in common with other tribes of British Columbia, actively pressed our claims upon the Governments concerned. In recent years, being more than ever convinced of the advantages to be derived from such recognition and fearing that without such the advance of settlement would endanger our whole future, we have pressed these claims with greatly increased earnestness.

Some of the advantages to be derived from establishing our aboriginal rights are:—

1. That it will place us in a position to reserve for own use and benefit such portions of our territory as are required for the future well-being of our people.

2. That it will enable us to a much greater extent and in a free and independent manner to make use of the fisheries and other natural resources pertaining to our territory.

3. That it will open the way for bringing to an end as rapidly as possible the system of Reserves and substituting a system of individual ownership.

4. That it will open the way for putting an end to all uncertainty and unrest, bringing about a permanent and satisfactory settlement between the white people and ourselves, and thus removing the danger of serious trouble which now undoubtedly exists.

5. That it will open the way for our taking our place as not only loyal British subjects but also Canadian citizens, as for many years we have desired to do.

In thus seeking to realize what is highest and best for our people, we have encountered a very serious difficulty in the attitude which has been assumed by the Government of British Columbia. That Government has neglected and refused to recognize our claims, and for many years has been selling over our heads large tracts of our lands. We claim that every such transaction entered into in respect of any part of these lands under the assumed authority of the Provincial Land Act has been entered into in violation of the Proclamation above mentioned. These transactions have been entered into notwithstanding our protests, oral and written, presented to the Government of British Columbia, surveyors employed by that Government and intending purchasers.

The request of the Indian Tribes of British Columbia made through their Provincial Organization, that the matter of Indian title be submitted to the Judicial Committee of His Majesty's Privy Council, having been before the Imperial Government and the Canadian Government for three years, and grave constitutional difficulties arising from the refusal of British Columbia to consent to a reference, having been encountered in dealing with that request, we resolved independently and directly to place a petition before His Majesty's Privy Council.

In following that course we desire to act to the fullest possible extent in harmony both with other tribes of British Columbia and with the Government of Canada.

We are informed that Mr. J. A. J. McKenna sent out by the Government of Canada has made a report in which he does not mention the claims which the Indians of the Province have been making for so many years, and assigns as the cause of all the trouble, the reversionary claim of the Province. Whatever other things Mr. McKenna found out during his stay, we are sure that he did not find out our mind or the real cause of the trouble.

We are also informed of the agreement relating only to the so-called reserves which was entered into by Mr. McKenna and Premier McBride. We are glad from its provisions to know that the Province has expressed willingness to abandon to a large extent the reversionary claim which has been made. We cannot, however, regard that agreement as forming a possible basis for settling the land question. We cannot concede that the two Governments have power by the agreement in question or any other agreement to dispose of the so-called Reserves or any other lands of British Columbia, until the territory of each nation or tribe has been purchased by the Crown as required by the Proclamation of King George Third.

We are also informed that in the course of recent negotiations, the Government of British Columbia has contended that under the terms of Union the Dominion of Canada is responsible for making treaties with the Indian Tribes in settlement of their claims. This attempt to shift responsibility to Canada and by doing so render it more difficult for us to establish our rights, seems to us utterly unfair and unjustifiable. We cannot prevent the Province from persisting in this attempt, but we can and do respectfully declare that we intend to persist in making our claim against the Province of British Columbia for the following among other reasons:—

1. We are advised that at the time of Confederation all lands embraced within our territory became the property of the province subject to any interest other than that of the province therein.

2. We have for a long time known that in 1875 the Department of Justice of Canada reported that the Indian Tribes of British Columbia are entitled to an interest in the lands of the province.

3. Notwithstanding the report then made and the position in accordance with that report consistently taken by every representative of Canada from the time of Lord Dufferin's speeches until the spring of the present year, and in

defiance of our frequest protests, the Province has sold a large proportion of the best lands of our territory and has by means of such wrongful sales received a large amount of money.

4. While we claim the right to be compensated for those portions of our territory which we may agree to surrender, we claim as even more important the right to reserve other portions permanently for our own use and benefit, and beyond doubt the portions which we would desire so to reserve would include much of the land which has been sold by the Province.

We are not opposed to the coming of the white people into our territory provided this be carried out justly and in accordance with the British principles embodied in the Royal Proclamation. If, therefore, as we expect, the aboriginal rights which we claim should be established by the decision of His Majesty's Privy Council, we would be prepared to take a moderate and reasonable position. In that event, while claiming the right to decide for ourselves the terms upon which we would deal with our territory, we would be willing that all matters outstanding between the Province and ourselves should be finally adjusted by some equitable method to be agreed upon which should include representation of the Indian Tribes upon any Commission which then might be appointed.

The above statement was unanimously adopted at a meeting of the Nishga Nation or Tribe of Indians held at Kincolith on the 22nd day of January, 1913, and it was resolved that a copy of same be placed in the hands of each of the following:—

The Secretary of State for the Colonies, the Prime Minister of Canada, the Minister of Indian Affairs, the Minister of Justice, Mr. J. M. Clark, K.C., Counsel for the Indian Rights Association of British Columbia, and the Chairman of the "Friends of the Indians of British Columbia."

W. J. LINCOLN,
Chairman of Meeting.

APPENDIX G

Copy 59,335-4A

16 December, 1918.

GENTLEMEN,—Referring to your letter of the 27th May last, on the subject of certain claims of the Nishga Tribe of Indians in British Columbia, I am directed by the Lord President of the Council to state as follows:—

1. One of the matters in dispute is set out in the Petition lodged by you on the 21st May, 1913, as "the nature and extent of the rights of the said Nishga Nation or Tribe in respect of the said Territory". The other is the question whether the Land Act of British Columbia is *ultra vires* of the Legislature of that Province.

2. If the contention of the Nishga Indians is, as it appears to be, that they have suffered an invasion of some legal right, the proper course would, in His Lordship's opinion, be for them to take such steps as may be open to them to litigate the matter in the Canadian Courts, from whose decision an appeal in the ordinary way can come to the Judicial Committee. It would seem that any intervention by the Crown by referring the matter specially direct to the said Committee would be an unconstitutional interference with the local jurisdiction.

3. If, however, the claim of the Indians does not rest on any legal basis, but is, in effect, a complaint of the executive action of the Provincial or the Dominion Government, it would appear that, in accordance with constitutional principles governing relations between the Crown and the Colonial Governments a special reference to the Judicial Committee to consider the action of the Dominion or Provincial Government could only be ordered on the recommendation of the Secretary of State for the Colonies, and that he would only advise such a reference after consulting, and in accordance with the advice received from the Dominion Government.

In these circumstances His Lordship cannot see his way to take any further action on the Petition.

I am, etc.,

(Sgd.) ALMERIC FITZROY.

Messrs. SMITHS, FOX AND SEDGWICK,
26 Lincoln's Inn Fields,
W.C. 2.

Copy.

OTTAWA, 14th November, 1914.

The Reverend ARTHUR E. O'MEARA, B.A.,
Prince George Hotel,
Toronto, Ont.

SIR: It is in my view unnecessary to correct the narrative of your letter of 26th ultimo, because except in the two points which I am going to mention it is immaterial to any question now under consideration.

As to your remark that it has always been the view of those advising the Nishgas that the only feasible method of securing a judicial determination of

the rights of the Indians of British Columbia is that of bringing their claims directly before His Majesty's Privy Council, I wish you would realize and endeavour to convince those whom you describe as advising the Nishgas that this Government has no power or authority to refer a question directly to His Majesty's Privy Council; that the only constitutional method of obtaining the judicial view of His Majesty in Council relating to a question limited to the internal affairs of Canada is by appeal from the local tribunals, and that His Royal Highness' Government is determined for these reasons, which have been so often explained to you and those whom you profess to represent, not to advise or concur in any proceedings looking to a decision in which the courts of the Dominion shall not have an opportunity to express their views. If, therefore, it be possible for me to make any statement here which can, consistently with the amenities of official correspondence, impress you with the futility of urging upon this Government a reference direct to the Judicial Committee, I beg of you to consider that statement incorporated in this letter.

The policy of the Government with regard to the British Columbia Indian question is very clearly stated in the Order in Council of 20th June last, and you should, I think, be able to perceive that one of the conditions upon which further progress may be made is that the Indians shall come under the obligation defined by the first anumeration of the Order in Council. You state that the Order in Council has been brought before the Nishgas Indians, and that they will, as soon as possible, place their answer before the Government. So far it is well, but when you say that it is clearly necessary that before the Nishgas answer they should be advised regarding the procedure of the courts, and demand to be informed under the authority of what enactment and for what reasons a reference to the Exchequer Court is proposed, I may I trust be permitted to observe that the essential question for consideration of the Nishgas is as to whether, if their alleged title be upheld by the ultimate tribunal, they are willing to surrender that title in consideration of benefits to be granted in extinguishment according to the ancient usage of the Crown. I think it would be a pity that this question should be obscured or involved in the difficulties which you have encountered about the procedure, and which the Indians presumably would be no better able to understand. Therefore, without making any further attempt to explain the procedure which perhaps could not succeed within the compass of an ordinary letter, I suggest that the Indians should be permitted to consider the question in which they are really interested as submitted by the Order in Council. It is unlikely I should think that the Indians would concern themselves with procedure. They have I imagine sufficient discernment to perceive, if their deliberations be not influenced to the contrary, that a question of procedure is at present quite irrelevant; but if necessary you may unhesitatingly assure them that no point of procedure will be permitted to prejudice a decision upon the merits of the case, and that the Government will see to it that the proceedings are brought and conducted in such a manner as to provide for the admission of all the facts and arguments which are material to the controversy.

May I be allowed to add that in view of what I have stated I do not propose to consider the procedure until it is ascertained that the Indians have acquesced in the conditions of the Order in Council which are preliminary to any procedure.

I have the honour to be,
Sir,
Your obedient servant,

(Sgd.) C. J. DOHERTY,
Minister of Justice.

Copy 59335-4.

Ottawa, 25th September, 1916.

Rev. Arthur E. O'Meara,
1621 Hutchison Street,
Montreal.

Dear Mr. O'Meara,—His Royal Highness has interviewed the Honourable Dr. Roche with reference to your letter of the 29th May and your interview with me and I am commanded by His Royal Highness to state that he considers it is the duty of the Nishga Tribe of Indians to await the decision of the Commission, after which, if they do not agree to the conditions set forth by the Commission, they can appeal to the Privy Council in England, when their case will have every consideration. As their contentions will be duly considered by the Privy Council in the event of the Indians being dissatisfied with the decision of the Commission, His Royal Highness is not prepared to interfere in the matter at present and he hopes that you will advise the Indians to await the decision of this Commission.

Yours sincerely,

Lieut-Col. ED. S. STANTON,
Governor General's Secretary.

Copy 59335-4A.

Ottawa, 17th March, 1920.

Rev. A. E. O'Meara,
Chateau Laurier,
Ottawa.

Sir,—I am commanded by His Excellency the Governor General to acknowledge the receipt of your letter of the 20th ultimo with regard to the Nishga Indians. You are probably aware that the claims of the Nishga Tribe of Indians in British Columbia have already been considered by the Privy Council. In May, 1913, a petition to His Majesty in Council was lodged on behalf of the Nishga Tribe of Indians praying that certain claims of theirs to land in British Columbia might be referred to the Judicial or other Committee of the Privy Council and Their Lordships, having given the petition their careful consideration, were of the opinion that no action on their part was required in the matter. The Lord President of the Council directed Sir Almeric Fitzroy to state as follows:—

1. One of the matters in dispute is set out in the Petition lodged by you on the 21st May, 1913, as " the nature and extent of the rights of the said Nishga Nation or Tribe in respect of the said Territory ". The other is the question whether the Land Act of British Columbia is *ultra vires* of the Legislature of that Province.

2. If the contention of the Nishga Indians is, as it appears to be, that they have suffered an invasion of some legal right, the proper course would, in the opinion of the Lord President of the Council, be for them to take such steps as may be open to them to litigate the matter in the Canadian Courts from whose decision an appeal in the ordinary way can come to the Judicial Committee. It would seem that any intervention by the Crown by referring the matter specially direct to the said Committee would be an unconstitutional interference with the local jurisdiction.

3. If however the claim of the Indians does not rest on any legal basis, but is, in effect, a complaint of the executive action of the Provincial or the Dominion Government, it would appear that, in accordance with constitutional principles governing relations between the Crown and the

Colonial Governments a special reference to the Judicial Committee to consider the action of the Dominion or Provincial Government could only be ordered on the recommendation of the Secretary of State for the Colonies, and that the latter could only advise such a reference after consulting, and in accordance with the advice received from the Dominion Government.

You have already been informed on several occasions of the attitude of the Dominion Government towards this claim and there does not appear to be anything further for me to add except that the Governor General takes no action, nor does he desire to take any action, except upon the advice of his constitutional advisers. Under these circumstances, I must ask you to consider this letter as final.

I have, etc.,

(Sgd.) Lieut-Col. H. G. HENDERSON,
Governor General's Secretary.

APPENDIX H

Department of Indian Affairs,
Canada

Office of the Deputy Superintendent General,

Ottawa, October 29, 1923.

Memorandum:

Honourable Charles Stewart.

I have the honour to transmit herewith the stenographic report of the meetings with the Executive Council of the Allied Tribes of British Columbia in Vancouver and Victoria. As you are aware the meetings at Vancouver were preliminary to the more detailed discussion which took place in Victoria.

As you thought it advisable that some representative of the British Columbia Government should be present at the round table conference with the Indians, I wrote to the Hon. Mr. Oliver as follows:—

" New Westminster, B.C., July 27th, 1923.

The Honourable John Oliver,
Prime Minister of British Columbia,
Victoria, B.C.

Dear Mr. Oliver,—You were kind enough to promise me an appointment on Monday morning next, and I shall expect to be in Victoria and call upon you then.

We propose to have some further conferences with the Indians on general matters pertaining to their claims, and I expect to be able to arrange a time for these meetings in Victoria by Tuesday or Wednesday.

The Honourable Mr. Stewart would urge upon you the advisability of the Government of British Columbia being represented by one of your Ministers at these meetings. I have, therefore, on his behalf to ask that you will give that matter your careful consideration.

Yours very truly,
(Signed) DUNCAN C. SCOTT,
Deputy Superintendent General of Indian Affairs.

Ottawa, Ontario.

As I knew that the Prime Minister intended to leave Victoria and be absent three or four weeks, I thought it well to make a special trip to the capital in order to urge upon him the consideration of what is known as the Supplementary List of Reserves. I interviewed him on the morning of July 30th. The Hon. Mr. Patullo was present during part of the interview. In discussing the matter I went into it rather fully and urged very strongly that the Supplementary List should be favourably considered. Mr. Patullo promised on behalf of his Government to have it carefully examined by Mr. MacKenzie, Grazing Commissioner, and Chief Inspector Ditchburn, but he did not give any assurance that any of the additional applications would be granted. Mr. Oliver expressed the opinion that there could be no finality of the Indian reserve question taking into consideration the Thirteenth Article of the Terms of Union, as under this section the Province was bound to give lands for Indian reserves from time to time whenever such were really required. This appeared to me to be Mr. Oliver's

personal opinion. I referred to my letter dated at New Westminster July 27th, and asked him to consider appointing a representative to be present at our meetings with the Indians. He said that he would consider that in Council that afternoon, and Mr. Ditchburn received later a note dated the 31st July, signed by Mr. Oliver's Private Secretary, as follows:—

PRIME MINISTER'S OFFICE,
VICTORIA, B.C., 31st July, 1923.

Mr. W. E. DITCHBURN,
Indian Agent,
City.

DEAR SIR,—In reference to the conference held yesterday between yourself and the Superintendent of Indian Affairs with the Premier and Hon. Mr. Patullo, I am directed by the Premier to say that the question of a representative of the Province attending any conference held between representatives of the Government of Canada and the Indians of British Columbia, was considered by the Executive Council this morning, and it was the opinion of the Council that whereas the charge of the Indians and their trusteeship and management of the lands reserved for their use is a function of the Dominion Government, therefore, any conference with the Indians should be solely with the representatives of that Government.

Any questions arising in respect of the Indians of B.C., involving any responsibility on the part of the Province, should be adjusted as between the Province and the Dominion, and therefore it is not necessary or advisable that the Province should be represented at any conference between the Indians and the Government of Canada.

Yours truly,

(Signed) J. MORTON,
Secretary.

The meetings in Victoria opened on Tuesday morning, August 7th. The Executive Committee of the Allied Tribes was present and Mr. O'Meara, their counsel. There was some preliminary discussion as to what procedure should be followed and I made clear to them the purpose of the meeting and the extent of my powers; also that it was your wish that we should have a full and frank presentation of the Indians' case and that they should be prepared to state what they would accept as compensation for the Indian title in the Provincial lands. They requested me to allow Mr. O'Meara to make a general statement of their case and I thought it proper to allow this. This statement will be found on pages 34 to 56 of the typewritten report. Mr. Kelly, the Chairman of the Executive Committee, asked me to explain the true meaning and intent of the statute which was passed to enable us to confirm the report of the Royal Commission, and the effect of the passage of Orders in Council under that statute, and similar legislation by the Province of British Columbia. This I attempted to do and probably succeeded. There is lack of distinctness in the stenographic report of this passage, but I believe the Committee finally understood the matter.

After Mr. O'Meara made his statement we entered into a discussion of the report of the Royal Commission, and at first an attempt was made to deal with it somewhat in detail. Although the members of the Committee had been in possession of this report for some time, they were not familiar with its contents. After some waste of time in dealing with certain agencies, it became evident that no progress would be made if we were to attempt to consider with minute-

ness the allotted reserves, the reduced reserves, and the new reserves. (See pages 85-87-88.) I expressed willingness to go on with the discussion, but the Chairman of the Committee said that the task would be "endless".

The Committee then fell back on a statement which had been made in a pamphlet prepared for the British Columbia Government in 1920, and as the discussion developed, it became clear that the Indians intended to rely on the claims made by that pamphlet, and in the end it will be found that all the claims made there, with one important addition, are now made conditions for the cession of the Indian title. I think it well, therefore, to place with the report a copy of this pamphlet.

The Indians expressed unwillingness to accept the report of the Royal Commission, giving their reasons and stating what in their opinion would be an adequate reserve allotment. These statements will be found on pages 87 to 101. The Indians demand that all foreshores, whether tidal or inland, be included in the reserves, and that a per capita standard of 160 acres of average agricultural land should be adopted in the allotment of reserves. While the demands and their reasons are set forth in the typewritten report of proceedings, it will probably be more convenient for you to read them in the printed pamphlet; they run from page 8 to 15.

The questions of grazing lands and irrigation were dealt with and the fullest information was given on these questions, which are of such great moment to the Indians in the central section of the Province.

The other conditions put forward by the Committee as a basis of settlement are set forth and argued in the remaining pages of the report and are as follows:—

Fishing Rights

There was an extended discussion on the question of fishing rights, which will be found between pages 135 and 172. At page 166 and for a few pages following the Chairman of the Committee made certain definite proposals in connection with the fishing question.

The Indians wish to claim the right to catch fish in all rivers, lakes and tidal waters of the Province without permit and without any limit, with the explicit understanding that the fish will be used by the Indians for food only.

They wish to be allowed to fish or troll for salmon without license in all tidal waters of the Province, and to be allowed seining licenses (both drag seine and purse seine) at half the prevailing fees.

They desire that the Indians only should be granted seining licenses to catch fish at the mouths of streams or rivers which flow through Indian reserves.

They desire that in all fishing districts certain waters be reserved for the exclusive use of Indian bands or tribes in those localities.

You will observe that on page 172 I got the Chairman of the Committee to state that they considered the favourable consideration of these requirements as absolutely essential to the surrender of the Indian title.

I am informed by the Chief Inspector for the Province of British Columbia under date of October 17th, that Mr. J. A. Motherwell, Chief Inspector of Fisheries for the Province, has stated that salmon and herring seining licenses similar to those which in the past have been issued to resident whites will in the future be available to Canadian Indians in their own names.

These are matters which will have to be discussed with the Department of Fisheries. I am in sympathy with the desire of the Indians to take fish for food and I do not think they should suffer any disabilities whatever in the prosecution of the fisheries. They should be on the same footing as any citizen of the Province when it comes to the prosecution of this industry.

The Fisheries Department had instructed their Chief Inspector, Mr. Motherwell, to give sympathetic attention to any representations that were made and

I had two interviews with Mr. Motherwell in Vancouver. I found him to be entirely willing to consider any questions relating to fisheries that were brought before him; and the intimation conveyed by the Chief Inspector of this Department that the Indians were now able to obtain seining licenses, would appear to me to be clearly the result of our interviews and the sympathetic attitude taken by the officers of this Department. I intend to have an extract made from the report of the proceedings of the discussion on the fisheries question and forward it to the Deputy Minister of Fisheries.

Hunting.

The Indians desire that areas should be set aside for hunting, which only Indians should be allowed to use; that they should be allowed to hunt unrestrictedly for food purposes and that the restrictions imposed by the British Columbia Game Act, which limits trapping privileges to those regularly employed in that occupation, should be removed.

Timber

The Indians request that they should be secured the perpetual privilege of cutting timber outside the reserves for fuel or for the manufacture of canoes and baskets.

Funded Moneys

The Indians request that an amendment to the Indian Act be passed whereby they will have freer use of their Capital Funds. They urge that there is a strong feeling among the people that the moneys funded for their benefit could be more usefully employed than at present.

Pelagic Sealing

They request that an amendment should be obtained to the pelagic sealing treaty of 1911 to allow towage of canoes by gasoline launches to the scene of the deep-sea hunting. They state that while they were given the privilege under the treaty of hunting in their canoes, it is dangerous to venture into the deep sea without the use of some larger auxiliary vessels.

Education

The Committee urged the establishment of an educational system which would reach all the Indian children of the Province; that the education should be technical and specially designed to fit the children for their after life, and that there should be provision for higher education in special cases.

Medical Attendance and Hospitals

The Committee urged the establishment of free medical and hospital service which will meet the special needs of the case. This would involve the establishment of sanataria for the treatment of tuberculosis.

Mothers' and Widows' pensions, as effective in British Columbia for white women.

Cash compensation for Annuities similar to Treaty Annuities.

To explain this item it is only necessary to quote Mr. Kelly's words given at the morning session on August 11th. (Pages 251-253):—

> We have come to a time when we are within sight of the closing of our series of meetings. And before summing up in a very brief general way, the subject matters which we discussed here during this conference, I would like to mention two matters of great importance.

The first one is this: It may be referred to as a monetary compensation. Now I am not unconscious of the position that we have taken when we met the Minister and yourself in Vancouver last year—that is July of 1922. At that time, although the words are not on record, I think we all have a very clear memory of what we have said. We deprecated the idea of putting on the same basis as the Indians in the territory and eastern provinces. That is to say, we deprecate the idea of receiving a few dollars annually. This sort of a thing we realize in the long run amounts to a great deal; for I understand that on this system the treaties guarantee that those annuities would continue until the Indians became extinct, or even absorbed into the larger body of citizenship. Generally speaking, Indians in this province have not looked upon that with any great favour. They think it does not really bring them anything worth while. Therefore we have taken the position that we did.

But we have learned several things since that time; and the general consensus of opinion among the Indians is this, that all that we have been claiming as necessary conditions for an equitable basis of settlement, plan more for the future rather than the present. When I say that, I do not for the moment forget the statement made by the Chief Inspector of Indian Agencies in Vancouver on the 27th of July last; but during the years since Union took place, since the Province entered Confederation, when this matter should have been adjusted, should have been dealt with and settled for all time, as was done in the other Provinces, the matter of course was left over; not because it was not known, but it was ignored—deliberately ignored. We all know the history of that. We all know the report made by the Chief Justice of the Dominion in 1875 on that very matter.

Now I need not try and make out a case there; but because of that position taken, we think that a monetary compensation running over a given period is nothing more than fair. Now we do not say that there should be an eternal annuity; but perhaps because of the brunt of the battle borne by the present generation, and also the last generation to some extent, in trying to get this matter up for real consideration by the Governments from time to time, we take it it would be a fair proposal to make, that monetary payments, perhaps covering a given period—I do not know how long,—that is open to negotiation—perhaps twenty years more or less; so that the people who are now living, and who will not be in a position to profit by any of the future benefits that we have claimed, would receive direct benefit from the question that is now being brought we hope to a position where we are in sight of a settlement.

Based on the present population of the Province, 24,744, for a twenty-year period and at the usual annuity of $5 per capita, this would mean a payment of $2,474,400.

Reimbursement of about $100,000 spent endeavouring to secure settlement of land title question.

To explain this item I would quote further from Mr. Kelly's speech on August 11th. (Pages 253-254):—

> And the second point that I want to deal with this morning, is what we might term the cost of the case. That is contained in paragraph 20, p. 15, of our statement. I will just read these words once again: "That all moneys already expended and to be expended by the Allied Tribes in connection with the Indian Land controversy, and the adjustment of all matters outstanding be provided by the Government." We have always insisted on this. And since the Minister has recognized

our aboriginal title, and has assured us that we are in a position as of having won our case in Court, we take the ground that we are entitled to the cost of the case. We have been put under heavy expense during these years past, when this matter has been pressed; not only in our particular organization known as the Allied Indian Tribes, but different organizations, we have pressed the matter before that. We think of the Indian Rights Organization, we think of the independent efforts that have been made by the different bands from time to time sending delegates to Ottawa.

It is true that those delegations looked only to adjustments in their own particular localities, but, nevertheless, it was part of the one large question. We are not putting any specific sum in at this particular time; we say that is open to negotiation, but I am inclined to think looking over accounts, the cost up to the present time has been something like a hundred thousand dollars, in a round sum. This we consider one of the necessary conditions to be seriously considered in the final settlement of this question.

Mr. DITCHBURN: Has that money all come from the Indians?

Mr. KELLY: Mostly from the Indians; some of it from other people, who have given it as loans. We must pay that back. Now it is not necessary for me to dwell on that any longer, I think. I think that is sufficiently covered.

This ends the transcript of the terms and conditions thought by the Indians to be essential for an equitable settlement of the Indian title in the Provincial lands of British Columbia. At the beginning of the meeting I drew the attention of the Committee to statements they had made at Vancouver a few days before. You will find the words on page 27 of the report, but I think it well to repeat it here.

> We see, Sir, that the Government has not got any magic powers to bring forth funds, their funds must come from the good will of the people of Canada; and we recognize this, that to take an unreasonable stand, to make our demands unreasonable, would be antagonizing the citizens of Canada generally, and we are not prepared to go that far. We recognize the danger of taking such a stand. Therefore, we are always open to reason, and I can assure you, any demands—claims, not demands, that we make, will always be within reason.

It must be taken then that the claims which are made are considered by the Committee at least within reason.

I had expected that the discussion would take a different course but it was apparent from the moment the Indians referred to their pamphlet prepared for the Government of British Columbia that they intended to take their stand upon the demands therein made. They saw fit to add to these claims a plea for a cash payment which would amount, at the twenty year period which was suggested, to nearly two and a half millions. That, so far as I can discern, is the only new item which appears in the schedule, as they had previously claimed a return of the money they had expended in the prosecution of this claim. I cannot refrain from expressing the opinion that far from being reasonable claims, they are exacting and extravagant. Favourable consideration would lead to the expenditure of such very large sums of money on the Indians of British Columbia that an envious feeling would be created in the minds of other Indians in the Dominion.

As the matter of most pressing importance was the acceptance by His Excellency in Council of the report of the Royal Commission, which action has already been taken by the Lieutenant-Governor of British Columbia in Council, I directed the particular attention of the Indians to it. A short discussion on this

point will be found on pages 250-251. It had become clear that they did not think the report of the Royal Commission was a satisfactory settlement of the Indian reserve question, but I pointed out that they had not stated definitely that they would recommend that the report be not confirmed by the Dominion Government. The other point that I pressed home was our desire to obtain an expression of their wish as to a judicial decision on the general question of title. This brought forth a very emphatic declaration from the Chairman; he said: "We launch an emphatic negative to the passing of any Order in Council, if that Order in Council is going to be the final adjustment of all matters relating to Indian affairs in this Province. We claim that Indian lands and Indian rights generally are just part of one big question, and, therefore, we refuse to have Orders in Council dealing with just one matter when that matter cuts away from under our feet, as it were, our constitutional stand."

With reference to the question of litigation, they wish to be considered as willing to have a settlement out of court, but if it seems impossible to get a fair and equitable settlement they wish to "press on to the Judicial Committee of the Privy Council."

In spite of this vigorous protest from the Indians as to the acceptance of the report of the Royal Commission, I cannot, with a due sense of responsibility and having the best interests of these people at heart, recommend any other action but the adoption of the report. The Indians will receive in the aggregate a large acreage of reserve lands free from any vexatious claims of the Province, such as the so-called "reversionary interest" has been in the past. While it is true that in some districts it would have been more satisfactory if larger reserves could have been set aside for them, conditions peculiar to British Columbia rendered that almost impossible, but the report of the Royal Commission provides reserves for these Indians which can be developed and utilized by them. Over against their complaint that they have not sufficient lands, we must set the statement, often well founded on fact, that they are not making good use of the lands provided for them.

If our Government refuses to further consider the report of the Royal Commission and fails to use the statutory power to confirm the report, I am afraid the future welfare of the British Columbia Indians will be jeopardized. The report is the outcome of long negotiations between the Governments, of an examination into the needs of the Indians on the ground, during which the evidence of Indians was taken and their advice and coöperation sought, and finally, there was a resurvey of the whole report by officers of the Governments and representatives of the Indians. I would recommend that the "cut offs" in the Railway Belt be cancelled and the reserves as originally set apart in the Railway Belt be confirmed. With the reserve question finally disposed of I had expected that the Indians would realize that their aboriginal title was in part already annually compensated for by the generous grants that the Dominion Parliament is making on their behalf, and would wish to add to those obligations of the Dominion an extension of the educational system and some better provision for hospitals and medical attendance. Such is not the case, and I have to submit the facts for your consideration.

DUNCAN C. SCOTT,
Deputy Superintendent General.

COMMITTEE ROOM 368,

THURSDAY, March 31, 1927.

The Special Joint Committee appointed to inquire into the claims of the Allied Indian Tribes of British Columbia, as set forth in their petition submitted to Parliament in June, 1926, met at 10 o'clock, a.m., Hon. Hewitt Bostock, presiding.

The CHAIRMAN: Mr. O'Meara, we would like to know exactly whom you represent?

Mr. O'MEARA: Mr. Beament will deal with that very matter.

The CHAIRMAN: Cannot you state yourself whom you represent here?

Mr. O'MEARA: Mr. Beament is ready to state that very matter; he has the papers and he is with me in this case.

The CHAIRMAN: Mr. Beament, will you just make a statement?

Mr. BEAMENT: Mr. O'Meara, with whom I appear, is appearing as General Counsel for the Association of Indian Tribes of British Columbia, which are known as the Allied Tribes, and who are the petitioners before these Houses. The Secretary of that Association, Mr. Paull, is here at the present time, and the Chairman of the Executive Committee of the Association is, I understand, on his way here. Is it desired that I should go into the details of who are the Allied Tribes?

The CHAIRMAN: I do not think there is any necessity to do that.

Mr. BEAMENT: Shortly, Mr. O'Meara's position is as I have stated. If it is the desire of this Committee, I can file Mr. O'Meara's written authority signed by the Chairman and the Secretary.

Hon. Mr. STEVENS: What is the date of that, Mr. Beament?

Mr. MCINTYRE: May I intrude? I represent the Chiefs from the Interior. I heard the Chairman inquire of this gentleman as to whom he represented, and I understood him to say that he represented the Allied Tribes of British Columbia. There is no such entity as that from the lawyers' point of view, and it is my duty to interrupt and to point out to the Chairman that my friend can only be representing the Indians known as the Coast Indians, although they are under the name of the Allied Tribes. I apologize for interrupting, but it was absolutely necessary. As I remarked to you this morning, Mr. Chairman, I was not present yesterday, nor were the Chiefs present, because we were misled by the instructions of the Deputy Superintendent General of Indian Affairs, from whom we understood that nothing was to be done yesterday. It was only in the afternoon that I learned for the first time that very important matters had come up and that a Chief from the Coast had spoken, named Andrew Paull. Later on I learned, not from Dr. Scott, but from another party, that he had also made a statement. I pointed out to Dr. Scott that these Indians from the Interior all should have been present at the meeting of the Committee yesterday. They are all here this morning and they profess to represent the whole of the Interior Tribes, specifically twenty-eight. Authority to that effect was sent in to you, Mr. Minister, about a year ago, subscribed by twenty-eight chiefs.

Hon. Mr. BENNETT: Do your clients make any claims with respect to aboriginal title?

Mr. MCINTYRE: Yes.

Hon. Mr. BENNETT: That is all I want to know.

The CHAIRMAN: Mr. McIntyre, would you file a list of the names of the tribes you represent in the Interior, and we will ask this gentleman to do the same thing?

Mr. BEAMENT: Hon. Mr. Stevens asked the date of the authority to which I referred; it is 1922. I have in addition a circular letter signed by the same Chairman and Secretary to all the Tribes comprising that alliance.

Mr. MCINTYRE: What is the date, may I ask?

Mr. BEAMENT: Dated 2nd December, 1926, in which the authority of the General Counsel of their Alliance is specifically confirmed, especially with a view to this particular matter.

Hon. Mr. BENNETT: Is it signed by the various tribes?

Mr. BEAMENT: No, it is signed by the Chairman and the Secretary of that Alliance.

Hon. Mr. BENNETT: Is the Chairman here?

Mr. BEAMENT: The Chairman is.

Hon. Mr. BENNETT: Let us find out from him who Mr. O'Meara represents.

ANDREW PAULL, re-called.

The CHAIRMAN: Mr. Paull, you are already sworn?

Mr. PAULL: Yes, your Honour. I truthfully say that the Allied Indian Tribes of British Columbia are composed of an organization which was formulated in the year 1922, when all these Chiefs, whom Mr. McIntyre is now representing, were a party to this Alliance. A meeting was held in North Vancouver and we discussed the formation of this Alliance for three days before we agreed to form an organization to represent the Indians of British Columbia in making representation to the different Governments. Again I say that every one of these Chiefs whom Mr. McIntyre represents attended that meeting and they were parties to the formation of the Allied Indian Tribes of British Columbia.

Hon. Mr. BENNETT: Have you had a meeting since?

Mr. PAULL: Yes.

Hon. Mr. BENNETT: When was the last meeting?

Mr. PAULL: Last October.

Hon. Mr. BENNETT: And what tribes are now represented by Mr. O'Meara?

Mr. PAULL: All of the Coast tribes; the Okanagan Tribes, the Lillooet Indians, and some of the Chilcottens; all of the Indians of Vancouver Island. Some of the Northeastern Interior Indians and a few of the Indians actually residing in Kamloops; a member from the Kamloops Reservation is a member of our Executive Council.

Hon. Mr. BARNARD: You say all the Indians of Vancouver Island?

Mr. PAULL: Yes.

Hon. Mr. BARNARD: I understand, from a statement that was made yesterday, that the lands on the Southern part of Vancouver Island were obtained by Treaty with the Hudson Bay Company. For instance the Songhees, are they represented in these proceedings; are they making any claim?

Mr. PAULL: I must correct my statement. With the exception of the Songhees Indians and the Sooke Indians of Vancouver Island, all the rest are in our organization. The Saanich Indians made a Treaty with the Hudson Bay Company; the Nanaimo Indians also made a Treaty with the Hudson Bay Company. They are included in our organization. It was contended by the

officials of the Indian Department, up to the year 1923, that these Indians that had made a Treaty with the Hudson Bay Company could not be recognized as having any claims for aboriginal title.

The CHAIRMAN: I do not think we are getting any further with this evidence. The best way is for Mr. O'Meara to make a full statement of what tribes he represents.

Hon. Mr. STEVENS: And his authority to represent them. There ought to be some minutes of their meetings. This question of whom Mr. O'Meara represents has been a bone of contention for years. Sometimes he seems to represent the Allied Tribes and other times he does not, and there ought to be some definite minutes of their meetings showing that Mr. O'Meara has an appointment. After all, we have got to respect the word of these other Chiefs; we cannot ignore that.

Mr. PAULL: If the Committee will allow me, I will go to my hotel and get my Minute Book and I can read from the Minutes of our organization when Mr. O'Meara was appointed.

Hon. Mr. BENNETT: That was in 1922?

Mr. PAULL: 1922, yes, sir.

Hon. Mr. STEWART: There is evidently conflict here. If the two Counsels would give the names of the Tribes they are representing that will be sufficient for our purpose.

Hon. Mr. McLENNAN: And the Tribes that are not represented at all.

Mr. O'MEARA: We represent here, officially and professionally, these very tribes, as well as other tribes, and that can be proved to you hon. gentlemen.

Hon. Mr. BENNETT: Mr. McIntyre says they are his clients.

Mr. BEAMENT: Is it desired that I should file this authority? I submit it is a continuing authority unless there is something shown to the contrary.

The CHAIRMAN: Mr. O'Meara, are you ready to go on?

Mr. BEAMENT: In addition, I would call your attention to the fact that the petition is the petition of the Allied Tribes. Mr. McIntyre says there is no such petitioner.

Hon. Mr. STEWART: We are going to listen to any evidence about that.

Mr. BEAMENT: Before proceeding further, might I ask this Committee just exactly what they want; whether they want us to stick to these allegations contained in the petition or not. We take a very narrow position, and if we confine ourselves exclusively to the petition, the matter, I think, may be dealt with very shortly. What we say is this: we are advised, whether rightly or wrongly, that we have in law a right by a petition to His Majesty in Council to have a judicial determination of the substantive question that rises out of the merits of our claim. We may be wrong in that, but we only ask these Houses to facilitate the hearing of that claim. This whole question of aboriginal title is admittably a most vexed one. I think it is also admitted that there are specific questions to be decided on their merits. To date, apparently, it has been impossible to reach an agreement with the Indian Tribes. These Tribes now come forward and consent to be bound by the decision of the Privy Council. We are not asking for an expression of opinion from this Committee or from Parliament on the substantive questions involved in our claims, but we are simply asking that you will recommend the facilitation of the hearing of these claims without waiving any defence which the Government of Canada may have to our substantive allegations.

In 1913, the Nishga Tribe, which is one of the Allied Tribes, filed a petition with His Majesty in Council. Our suggestion is that a further petition be prepared.

Hon. Mr. STEVENS: What happened to that petition?

Mr. BEAMENT: It is still standing, I understand.

Hon. Mr. STEVENS: Were not material charges referred back to this Government?

Mr. BEAMENT: That I do not know.

Mr. O'MEARA: That is a matter to be placed before the Committee.

Hon. Mr. STEVENS: Was it or was it not? Surely you must know?

Mr. O'MEARA: That will be fully dealt with.

Hon. Mr. STEVENS: Was it or was it not referred back to this Government?

Mr. O'MEARA: There were communications on the subject, several dispatches between the Imperial Government and the Canadian Government; the full facts will be laid before the Committee.

Mr. BEAMENT: What we are really asking is that this Committee recommend that the petitioning Tribes be permitted to file with His Majesty in Council, for decision, a petition in the terms extended to include all the Tribes who are now petitioning, but in the terms, or similar terms, of that petition which was filed in 1913. I was reading a copy of Hansard and saw that Mr. Stewart has taken the position that our claims are not sufficiently definite. I think the claim as stated in the petition would be sufficiently definite to place, without any particular degree of doubt, the question at issue before the Committee of the Privy Council.

The CHAIRMAN: This Committee wants you to produce evidence on what you base that claim of aboriginal title. Now, are you prepared to do that?

Mr. BEAMENT: Yes, we are prepared to do that, if this Committee thinks it is necessary. We want it clearly understood we are not asking this Committee to decide the merits of the question of our title.

Hon. Mr. STEWART: But you are asking us to decide the merits as to whether we should give you the privilege of going to the Privy Council?

Mr. BEAMENT: Exactly. It seems to be admitted by Dr. Scott's memorandum that there are specific questions for determination.

Hon. Mr. BENNETT: As I understand it, a petition was presented to His Majesty in Council at London, and His Majesty's Ministers referred it to Canada, and this Committee is now sitting to determine the matter as a Committee of the High Court of Parliament in joint session; is that right?

The CHAIRMAN: Quite right.

Hon. Mr. BENNETT: This Committee of the High Court of Parliament is going to settle this matter as I understand it, or make a recommendation to Parliament.

Hon. Mr. STEWART: That is set out in the preamble.

Hon. Mr. STEVENS: May I ask Mr. Beament this: The claim of your clients, as set forth in this petition to Parliament is: "The Indian Tribes of British Columbia claim actual beneficial ownership of their territory, but do not claim absolute ownership in the sense of ownership existing in the title of the Crown. It is recognized by the Allied Tribes that there is, in respect of all public lands of the province, an underlying title of the Crown, which title, at least for the present purposes, it is not thought necessary to define." The point is, do you claim an underlying title on behalf of your clients?

Mr. BEAMENT: We claim a beneficial title.

Hon. Mr. STEVENS: I think we had better let them produce what evidence they have to support that and give us an opportunity to get to the root of this matter.

Mr. BEAMENT: I take it that it is the desire of this Committee that this petition should not be treated in the terms of the petition but should be treated as a petition for the determination of the substantive rights of the Tribes, which it is most certainly not, according to its terms.

Hon. Mr. STEVENS: Have you read the terms? It is about 90 per cent historical.

Mr. BEAMENT: I was referring particularly to the relief asked.

The CHAIRMAN: What petition are you referring to?

Mr. BEAMENT: The petition this Committee is considering.

Hon. Mr. STEVENS: If you limited it to the last of that, our problem is very simple. All we have to do is to sit in camera and consider whether we shall do a certain thing or not. There is no call for evidence on the latter part of the thing at all.

Mr. BENNETT: Mr. Chairman, we are carrying out paragraph No. 4 of the prayer; that this petition be referred to a special committee for full consideration. That is what we are now doing. The other three paragraphs of the prayer involve certain references to aboriginal rights and the third paragraph is the one dealing with the facilitation of a reference to the Judicial Committee of the Privy Council. This Committee is carrying out now the terms of the reference, and I do not suppose Parliament is going to provide money for a reference to the Judicial Committee. Are we not to settle it ourselves?

Mr. MCPHERSON: I think, Mr. Chairman, that is the whole petition really; the right to submit it to the Privy Council.

Hon. Mr. STEVENS: That is shown on page 256.

Mr. MCPHERSON: It is covered really by the third, asking that steps be taken to submit these matters.

Hon. Mr. BENNETT: Paragraph two is the important one; that steps be taken for defining and settling between the Allied Tribes and the Dominion. That is a clear and definite statement of the situation and we will settle the issue here.

Mr. BEAMENT: I submit, Mr. Chairman, that this is only a settlement of the issue for determination, and not a decision of the substantive question.

Hon. Mr. BENNETT: We understand what the English of it is.

Mr. O'MEARA: My learned friend is absolutely right, Mr. Chairman. It is the deliberate intention to limit that petition to the one matter of judicial decision.

Hon. Mr. MURPHY: The language of prayer No. 4 of the petition is, that this petition and all related matters be referred to a Special Committee for full consideration. That is what we are doing.

The CHAIRMAN: The Committee desires evidence from Mr. Beament of what he bases his statement on. That is what we want now, and are we prepared to go ahead?

Mr. BEAMENT: I take it the committee wishes to go into the whole question including the actual merits of the claim.

Mr. HAY: The committee wants evidence. There has been a statement filed. It is already on file and was sent in by mail for certain of the Tribes.

Mr. BEAMENT: The only question that still concerns me is, exactly on what points the committee wants evidence.

Hon. Mr. STEWART: You were told yesterday, and Mr. O'Meara was also, to confine himself this morning to statements in rebuttal of the statement made by Mr. Scott yesterday with respect to the aboriginal title and that alone; other matters would come later. Mr. O'Meara was instructed to be prepared on that point.

Mr. O'MEARA: If that was so understood, it was not rightly understood.

Hon. Mr. STEWART: You are at your old tricks again, Mr. O'Meara. I told you myself so that there would be no mistake about it, before you left this room.

Mr. O'MEARA: My duty, Mr. Chairman, is to present that petition to the Parliament of Canada through this committee, that is what I am here for. I am here for that serious business and I am ready to go on and not for any limited purpose such as is suggested.

Mr. HAY: Is it not the rule that we have evidence first submitted as to whom you represent; then whom Mr. McIntyre represents, and so on?

Mr. O'MEARA: I do not admit for a moment that Mr. McIntyre represents those tribes.

Mr. HAY: He admits it and he has made the statement. Now if you will file some evidence with reference to yourself, as to whom you represent and whom Mr. McIntyre represents, we will receive it.

Hon. Mr. MURPHY: Mr. Chairman, there can be no doubt of the understanding reached yesterday. Here it is in the official report. Addressing Mr. O'Meara the Chairman said:—

> The Committee wants you to come prepared to argue the points raised this morning.

Mr. O'MEARA: I understand perfectly well.

What is the use of wasting time now?

Mr. O'MEARA: I think, Honourable Gentlemen, that I can make the position clear in five minutes.

The CHAIRMAN: Then take your place at the foot of the table and proceed.

Hon. Mr. MURPHY: It is a quarter to eleven now and we have wasted all this time.

Mr. O'MEARA: Mr. Chairman, and honourable gentlemen of the Committee: Following up my friend's statement to the Committee, I wish to read a part of the paper that has been handed in to the Chairman a few minutes ago, because it very materially bears upon this petition that is before the committee, and deals with the petition. This is a circular letter sent out on the 2nd December last by Mr. Kelly, Chairman of the Executive Committee of the Allied Tribes, and Mr. Paull, Secretary of that committee. Mr. Paull is here at the present time. The part that I am going to read is the part that directly bears on and deals with the case before Parliament as it is to-day. I read now from that circular letter:—

> The present position of the Indian case at Ottawa is that the petition as brought before Parliament, and the Indian case as brought before His Majesty's Privy Council, therefore manifestly requires to be dealt with along sound judicial lines. There is good reason for expecting that on an early day of the session, leading members of the House of Commons will press for the taking of action upon the petition of Allied Tribes. If as a result the House of Commons shall appoint a special committee, the first business of such committee will be consideration of the matters which are subject of discussion which was entered upon by the General Council with the Minister of Justice, namely the *fiat* which was promised by the Minister of the Interior in the House of Commons, and common ground which might be reached by the Government of Canada and the Allied Tribes in connection with the carrying forward of their independent judicial proceedings. The special committee will also consider the closely related matter of the first three prayers of the petition asking for, 1st:

safeguarding of the aboriginal rights of the Indian Tribes of British Columbia.

2nd: Defining of the issue between the Allied Tribes and the two Governments, which require to be judicially decided.

3rd: Helping forward the independent judicial proceedings of the Allied Tribes.

Hon. Mr. BENNETT: Why do you leave out the words "and settling" when you are reading it? "That steps be taken for defining and settling between the Allied Tribes and the Dominion of Canada".

Mr. O'MEARA: I beg pardon; I did not catch the question? Why did I leave out?

Hon. Mr. BENNETT: The words "and settling".

Mr. O'MEARA: May I remark that I am reading from a circular letter sent out by the two executive officers, giving a popular statement, so to speak, to the Indian Tribes, but not purporting to give the very words. May I proceed?

> After these matters shall have been discussed we shall be in a position to decide whether it has become necessary for the Chairman or other representative of the Allied Tribes to go to Ottawa. The Allied Tribes are advised that the sending of a larger delegation would be rendered necessary only by some quite new developments which might occur in Parliament but not now thought to be probable.

That is the extract. Now honourable gentlemen, I wish next to place before this committee for special consideration the exact debate that occurred in the Senate, showing for what purpose the committee of the Senate was appointed.

Hon. Mr. BENNETT: The order of reference covered that. There is no necessity for reading that Mr. Chairman.

Mr. O'MEARA: I think the honourable gentleman will see in a minute or two why I read it.

Hon. Mr. BENNETT: What may be said in the Senate is not necessary. The order of reference covers that, Mr. Chairman.

Hon. Mr. MCLENNAN: It does not help us.

The CHAIRMAN: I do not think it is necessary.

Mr. O'MEARA: It has a direct bearing upon the proceeding with this petition before this Committee. And if the honourable gentleman will bear with me, I will read a few words from it.

The CHAIRMAN: What we want to get is the evidence upon which you base your claim. You are not producing evidence now. You are only going back to what has happened before these committees.

Hon. Mr. STEVENS: Mr. Chairman, this is an old trick of our friend who is now addressing the Committee. He is building up out of quotations from here and there, something which he thinks will support his own contentions; trying to trip a Senator who may have made an observation in the Senate, or a member in the House of Commons, or a public man outside. It is not evidence. Our order of reference shows why we are here and nothing that was said in the Senate will alter that. I think it is absurd to bring in what members may have said, without consideration, and present it to this committee as a support to his own views. That is really what the object is in presenting this Hansard report.

Hon. Mr. BENNETT: It is in no sense binding.

Mr. O'MEARA: The representative of the Government in the Senate made a definite statement.

Mr. MCPHERSON: Mr. Chairman, I agree with Mr. Stevens that what we want is evidence, and we are not going to be bound by what has been said in

the past by public men in this discussion. If we are, we do not need to hear it now; we can read it.

Hon. Mr. STEVENS: You do not help your case a bit, Mr. O'Meara, by reading that.

Mr. O'MEARA: If the honourable gentleman will permit me to read these few words, then the Committee will see why I want to read them.

Hon. Mr. BARNARD: I would like to know whether Mr. O'Meara is going to respect the ruling of the Chair.

Mr. O'MEARA: I will certainly drop it at once if you say so. My definite advice to the Tribes last October was that in dealing with this petition no oral evidence was needed; that all the facts could be proved by documentary evidence; that therefore there was no necessity of sending from British Columbia any witnesses to give evidence before the committee. Also my advice was that it was not necessary to send a delegation and that no delegation should be sent on behalf of the Allied Tribes until the matters that are referred to in that circular letter had been discussed with the Committee or Parliament. The fact is that all the tribes of British Columbia were informed of that by circular letter. The fact also is that the statement in the Senate will be found, honourable gentlemen, to be completely in accordance with the advice that I then gave, and speaks of dealing with this case on the record as it stands.

Hon. Mr. MURPHY: Then all we need, Mr. Chairman, is the record. We need not take time with this at all.

Hon. Mr. BENNETT: That record should be handed in.

Hon. Mr. MURPHY: Yes, get the papers.

The CHAIRMAN: Have you all the documentary evidence there, Mr. O'Meara?

Mr. O'MEARA: And I so informed the Minister of Justice by a communication which went to him immediately after the first debate occurred on the 11th February.

Hon. Mr. McLENNAN: Have you handed in that statement of documentary evidence? And have we got that statement before us?

Mr. O'MEARA: I have everything right here.

Hon. Mr. McLENNAN: Then hand it in.

Hon. Mr. STEWART: That was filed with the Minister of Justice, I may say for information. It was not filed with us.

Mr. O'MEARA: The main work immediately to be done is to convince this committee of the correctness of everything that is in that petition. I humbly submit that that is not altogether a matter of evidence such as would be given by witnesses. It involves all sorts of other evidence. Evidence regarding the constitutional position as shown by the decisions, for instance, of the Judicial Committee of His Majesty's Privy Council.

Hon. Mr. STEWART: Mr. O'Meara, that document that you filed with the Minister of Justice, you did not file with the Department of Indian Affairs at all. Is that the one you are now referring to which you say is a complete statement of your case?

Mr. O'MEARA: I beg pardon?

Hon. Mr. STEWART: That document or memorandum that you filed is with the Minister of Justice. We have no document of that character in the Department of Indian Affairs.

Mr. O'MEARA: Does the Honourable Mr. Stewart refer to a paper called "Introductory notes for the Parliament of Canada?"

Hon. Mr. STEWART: No, I am asking you about your case that you state you filed with the Minister of Justice. I say we have not a copy of that statement in the Department of Indian Affairs.

Mr. O'MEARA: Oh, the communication to him; I sent his statement by lettergram to the Minister of Justice immediately after seeing the report in the press of the debate in the House of Commons.

Hon. Mr. STEWART: I am not asking about that at all. I am asking about a full statement that you say you made on behalf of the Allied Tribes, to the Minister of Justice.

Mr. MCPHERSON: A brief that you filed.

Mr. O'MEARA: I am now going to refer to the paper that I have put in the hands of the Minister of Justice. I have it here. I did not intend just now to refer to any full paper.

The CHAIRMAN: If you have filed that with the Minister of Justice, it is not necessary to take up the time of the committee by reading it.

Mr. O'MEARA: Well, Mr. Chairman, and honourable gentlemen, I definitely and deliberately claim to represent all the principal tribes of the province of British Columbia, and I say to this august body that every one of those tribes is expecting me to seriously present their case as is shown by that petition to Parliament, to this committee, and that is what I am proposing now to do; and in order as much as possible to shorten that and also to make it as clear as possible I am about to read the main parts of the statement which was actually sent by me to the Minister of Justice and it is headed "Introductory Notes for the Parliament of Canada." I am about to read the main parts of that if the Committee sees fit to permit me.

Hon. Mr. STEWART: Have you a copy of that statement with you, Mr. O'Meara?

Mr. O'MEARA: At the present moment I only have the one.

Hon. Mr. STEWART: I wish you would file it with the Chairman.

Mr. O'MEARA: I will see that a copy is made.

Hon. Mr. STEWART: Proceed then please. I do not want to interrupt you any more.

Mr. O'Meara's statement filed as follows:—

"THE BRITISH COLUMBIA INDIAN LAND CONTROVERSY

INTRODUCTORY NOTES FOR THE PARLIAMENT OF CANADA PREPARED BY THE GENERAL COUNCIL OF ALLIED INDIAN TRIBES

It is important at the outset to make clear that the claims of the Indian Tribes of British Columbia which now are presented by me as General Counsel of the allied Indian Tribes of British Columbia are the very claims which had been consistently and persistently presented by the Indian Tribes themselves to the Governments and all others concerned throughout fifty years when in the year 1916 the alliance of Tribes was formed and I undertook professional charge of the Indian case.

As is shown by official Memorandum issued in the month of January, 1922, copy of which is on file in the Department of Justice, I am Advocate of every allied Tribe "before His Majesty's Privy Council, the Parliament of Canada, the Governments and all others concerned." Through my voice every allied Tribe speaks. The claims presented by me are the claims actually made by every allied Tribe. Every Indian Tribe of this Province has always said of the territory of the Tribe—this is our country—we claim that to all our territory we have a real beneficial tribal title.

[A. E. O'Meara.]

The territorial land rights so claimed have been in a remarkable degree misunderstood and misrepresented. The allied Tribes do not claim such territorial rights for any purpose of ejecting from the territory those who are not members of the Tribe or disturbing any title held in good faith in this Province. They claim such territorial rights and are seeking to establish them as a basis of equitable settlement to be brought about between the Indian Tribes and the two Governments. They think that such settlement should include their permanent rights in respect of reserved lands together with their foreshore rights and their fishing rights, hunting rights, water rights and all other general rights, and in respect of all territory which shall be surrendered should provide for compensation to be equitably settled.

The objective of the allied Tribes has always been and now is settlement—a real settlement based upon the actual rights of the Tribes and equitably brought about—such settlement as the late Mr. Harcourt, Secretary of State for the colonies, in course of his Despatch which was sent to the Governor General of Canada in the month of July, 1911, described as 'an equitable solution of this troublesome case.'

The allied Tribes and all advising them professionally and otherwise and all helping them have done their utmost towards accomplishing such settlement by means of discussion and negotiation with the two Governments, and they continued to do so notwithstanding serious difficulties placed in the way notably the McKenna-McBride Agreement and the law of the year 1920, until on 19th July, 1924, by passing Order in Council adopting the Report of Royal Commission the Government of Canada closed the door against the bringing about of any such settlement.

From the door so closed against them the allied Tribes turned to the door of His Majesty's Privy Council which had already for a length of time been opened before them. Thus judicial decision of the Indian land controversy became their one fixed immediate objective and they resolved to exclusively devote themselves to the establishment of their rights.

Consequently it will be found that the Petition now before Parliament does not bring before Parliament the subject of terms of settlement and that the prayers of the Petition seek to obtain only the safeguarding of the aboriginal rights of the Indian Tribes, the defining and settling of the issues requiring to be judicially decided, and the facilitating of the independent proceedings of the allied Tribes now in His Majesty's Privy Council and such other independent judicial proceedings as shall be found necessary.

The claims of the allied Indian Tribes, the grounds upon which their claims rest, the present position of their case in His Majesty's Privy Council and before the Parliament of Canada, and the resulting responsibility resting upon the Dominion of Canada are shown with some degree of fullness by three papers to which attention is requested, namely:—

1. Letter addressed by General Counsel to Minister of Justice on 17th August, 1925.
2. Petition presented to both Houses of Parliament on the 10th day of June, 1926, and fully recorded in both Hansards of the 14th day of same month.
3. Notes prepared for the Acting Minister of Interior by the Chairman and the General Counsel of allied Tribes on 10th July, 1926.

I have advised the allied Tribes that the territorial land rights which they have always claimed are constitutionally of the nature of tribal or communal ownership, have been expressly preserved by the British North America Act, and under Section 109 of that Act are an interest in all lands acquired by the Province of British Columbia which an Indian Tribe can assert against the Province.

The advice so given is supported by the Report of the Minister of Justice issued in the month of January, 1875, the opinion of Mr. E. L. Newcombe, K.C., now a Judge of the Supreme Court of Canada stated in his book "The British North America Acts" published in the year 1908 at page 89, and a number of judgments delivered by their Lordships of the Judicial Committee of His Majesty's Privy Council notably that delivered in the Southern Nigeria case which was decided in the month of July, 1921.

In the month of September, 1916, the allied Tribes received definite assurances of His Majesty the King, conveyed in writing by His Majesty's Representative in Canada the Duke of Connaught, that His Majesty's Privy Council would consider the Petition of the Nishga Tribe which had been presented to His Majesty in Council.

In the month of December, 1918, by correspondence which had been conducted between the London Agents of the Allied Tribes and the Lord President of His Majesty's Privy Council it had been made clear, as the allied Tribes are advised, that they are entitled to obtain judgment of the Judicial Committee deciding the Indian land controversy and that the only question then remaining open was that of procedure.

The result of what has been stated in the preceding two paragraphs, as the allied Tribes are advised, is that their constitutional right of proceeding independently in His Majesty's Privy Council and securing judgment of the Judicial Committee has been established in the most authoritative possible way. Having thus stated the position of the Indian case in England I proceed to state the assurances which on behalf of Canada have been given to the allied Tribes.

In the month of August, 1910, at Prince Rupert Sir Wilfrid Laurier, Prime Minister of Canada, addressing in that capacity representatives of the Northern Tribes gave assurance that Canada would help the Indian Tribes of British Columbia in obtaining judgment of the Judicial Committee of His Majesty's Privy Council deciding the Indian land controversy.

On the 27th day of July, 1923, at Vancouver the Minister of Interior, addressing the most representative gathering of the Indians of British Columbia ever held and speaking on behalf of the Government of Canada, conceded that the allied Tribes are entitled to obtain judicial decision of the Indian land controversy and gave assurance that the Dominion of Canada would help them in obtaining such decision.

On the 26th day of June, 1925, in course of debate in the House of Commons the Minister of Interior speaking on behalf of the Government of Canada conceded that the allied Tribes are entitled to obtain from His Majesty's Privy Council decision of the Indian land controversy and agreed that the Government would give authoritative sanction for doing so.

In view of all the assurances which have been above briefly stated, I beg respectfully on behalf of every allied Tribe to say that the allied Tribes are not prepared to release the Dominion of Canada from the assurances which have been given on behalf of Canada, but on the contrary are seeking and expect to obtain fulfilment of those assurances.

By letter which acting under resolution adopted by the Executive Committee of allied Tribes the Chairman addressed to the Minister of Interior on 13th November last the Minister's attention was requested to the assurances which have been given on behalf of Canada and to the Petition now before Parliament and the Minister was invited to answer all or any of the contents of the Petition. The Minister has not yet given any such answer. This experience does not greatly surprise the allied Tribes. It is exactly the experience that they have had in relation to all outstanding papers which by or on behalf of the allied Tribes have been presented to the Government of Canada since I undertook professional charge of the Indian case, to no one of which the

Department of Indian Affairs has attempted to give a meritorious answer. It is thought by the allied Tribes that for the absence of answer there is a very simple explanation. They think that all the main representations which have been made by them and on behalf and in particular those contained in the Petition now before Parliament are unanswerable.

It is submitted on behalf of the allied Tribes that, as the Petition now before Parliament deals with property rights which are the subject of controversy between the Indian Tribes and the two Governments, they are entitled, according to British constitutional principles firmly established and founded upon the provisions of Magna Charta, to secure that their Petition shall be referred to a Special Committee.

I conclude these Notes by requesting special attention to the following words quoted from my letter addressed to the Minister of Justice:—

> Notwithstanding the provisions of the law of the year 1920 and the position which has arisen from that law as stated in the two papers issued by the Delegates and my own letters, the serious character of which I fully appreciate, I believe that the Minister's "unending difficulty" might be brought to an end very simply and speedily. If you should be prepared to discuss this matter I shall be prepared to suggest for your consideration common ground which might be reached by the Government of Canada and the allied Tribes. I would with some degree of confidence expect to convince you that it is the only common ground constitutionally and practically possible.

The offer then made which was placed before Parliament by paragraph 22 of the Petition still stands. When, action having been decided upon, a Special Committee or Special Committees of the two Houses shall have been appointed, I shall be prepared to bring before the Special Committee or Special Committees particulars of the common ground to which I made reference.

A. E. O'M.

VANCOUVER, B.C.,
4th February, 1927."

Mr. O'MEARA: I will put before you the material parts showing the basis of what I propose to say to the Committee. It is not a matter of handing in a copy of it.

It is important, at the outset, to make clear that the claims of the Indian Tribes of British Columbia, which are now presented by me as general counsel of the Allied Indian Tribes of British Columbia, are the very claims which have been consistently and persistently presented by the Indian Tribes themselves to the Governments, and all others concerned, throughout the past 50 years. In the year 1916, an alliance of the Tribes was formed, and I undertook the professional charge of the case for the Indians. This is shown by the official memorandum which has been handed to the Chairman. I am the advocate of every Allied Tribe before his Majesty's Privy Council, the Parliament of Canada, and the Governments of other provinces. This memorandum represents my voice on behalf of the Allied Tribes, and is a presentation by me, of their claims, which claims are actually made by every Allied Tribe in the Province of British Columbia. Every Indian Tribe in British Columbia has always considered British Columbia to be the territory of the Tribes; their country; territory to which they have a real beneficial tribal title.

Hon. Mr. MURPHY: Is it stuff like this the aboriginal title is based upon? If so, it is a most scandalous waste of time of this Committee.

The CHAIRMAN: You stated a moment ago you were going to put forward the basis of your contention, supported by documentary evidence. Cannot you do that so that the Committee can read and study it, and time need not be taken up in this way?

Mr. O'MEARA: I have just had an intimation that I am responsible for proceeding with my argument, Mr. Chairman.

Hon. Mr. STEVENS: This is not argument, and you ought to know it.

Mr. O'MEARA: It is argument.

Hon. Mr. STEVENS: It is not argument. If you would present facts to this Committee, I know the Committee would be delighted. If you have any documents and decisions that you claim are in support of your contention, the Committee will be glad to have them. It is these endless dissertations which are so wearisome.

Mr. O'MEARA: The trouble has been rather endless, because it has existed for sixty years. I know I have a responsible task, hon. gentlemen, but perhaps you will have a sufficient degree of confidence in me as counsel for the Allied Tribes, or, perhaps confidence in the Tribes, to permit me a certain measure of discretion in presenting this case to the Committee.

Hon. Mr. STEVENS: I must confess that experience teaches us to the contrary.

Hon. Mr. MCLENNAN: The gentleman undertook to only take five minutes to explain certain things; he has now taken nearly 20 minutes, and has simply gone over various questions. From what I know, there is a dispute as to whom he represents. He has purported to read from a document which had apparently been presented to the Minister of Justice. It cannot be a statement of that kind. It is not with any hostility to any claims Mr. O'Meara wishes to present that I make this interruption; it is a waste of time to talk of irrelevant matters.

Mr. O'MEARA: With all sorts of deference to this Committee, I never, for one moment, gave such an undertaking, that I would make my remarks in five minutes.

Hon. Mr. MCLENNAN: You were to make an explanation which would clean up the whole matter.

Hon. Mr. MURPHY: It was then a quarter to eleven, and he has now been speaking for half an hour.

Mr. O'MEARA: I will say this: a discussion of this matter was entered upon between the Minister of Justice and myself on the 19th of August, 1925, and was continued with a number of very serious interviews between the Deputy Minister and myself, extending to the month of October of that year. It has a very decided bearing upon what I am now presenting to this Committee.

Hon. Mr. BENNETT: It has nothing to do with the reference to this Committee. As Mr. McPherson has said, the reference covers all we have to deal with.

Mr. O'MEARA: I was about to give the Committee the exact facts in regard to that position; if the Committee does not desire to have that, at this stage—

Hon. Mr. STEVENS: The Committee have asked you, as you claim to be counsel for these Indian Tribes, to present to the Committee the arguments and evidence supporting the prayer of your petition, which is shown at page 266 of the Senate records of 1926.

Mr. O'MEARA: If it is the pleasure of the Committee, I will reserve certain matters until I have done that, and I will go right on with the petition. This is a petition of the Allied Indian Tribes of British Columbia—

The CHAIRMAN: You are not going to read the petition, are you? The Committee has the petition before them.

Hon. Mr. STEVENS: We have it here, and are waiting for you to give your support to it.

Mr. O'MEARA: I am now ready to furnish such evidence as this Committee requires. In one part of this petition—

Hon. Mr. BENNETT: The case for the petitioners must rest upon the facts and the law. The facts should be deposed to by witnesses, and the law argued by counsel. I should like to ask this witness what he can say in the way of presenting the facts, first, that come within the order of reference. Then we will listen to a legal argument, based upon authorities.

Mr. MCPHERSON: In addition to that, I think some member asked Mr. Paull, yesterday, what was the Indians' claim, and he said he did not wish to make a statement, that Mr. O'Meara would make the statement. Now, in order to get that point disposed of, could we have Mr. O'Meara say what is the claim of the Indians, for instance, as to their beneficial interest in the lands of British Columbia, and then dealing with the other points in succession. Can we restrict it to that?

Mr. O'MEARA: I appreciate the remarks made by the hon. gentlemen, and I was proceeding along that line. I was about to give, in the shortest possible form, a statement of this matter. Then I was going on to give the evidence in support of the petition, as far as the Committee thought necessary. I think little actual evidence is necessary, that all the evidence can be given by the documents. I would ask the Committee to accept that explanation, and allow me to proceed with my very carefully condensed statement.

The CHAIRMAN: You are now going to deal with the statement you were reading before?

Mr. O'MEARA: I have in mind the remarks just now made, and I am asked, as a witness, to give evidence. I am here as general counsel of the Allied Tribes, but if there is any knowledge I have incidentally acquired, I would not hesitate for a moment to give it. But I am here as counsel for the Tribes, and having that responsibility, I propose to seriously present their case. Their case is embodied in the petition which is before Parliament. In order to deal with it in a satisfactory way, I was proceeding to deal with the very condensed statement I have prepared, dealing with the aboriginal title. The hon. members did not approve of that course, so I stopped.

The CHAIRMAN: We stopped you reading that document, because that document will be in the hands of the Committee, and they can consider it. What we want are the facts, to be given in evidence.

Mr. O'MEARA: This is not that sort of document. What I propose to do is, if the Committee will allow me to proceed—

Hon. Mr. MURPHY: What could be plainer, as to the requirements of this Committee, than was stated in the language of Mr. McPherson a few moments ago? Mr. O'Meara, acting for the Indians, should state their claims in consecutive order. That is all we need.

Mr. O'MEARA: That is what I was about to do.

Mr. MORIN: You are always about to do it, but never do it.

Mr. O'MEARA: I was stopped. I have to obey the Committee. I know what the remark was that was made by the hon. Chairman, but I say this is not that sort of paper; this is a paper which is intended to enable me in the clearest, and most definite way to meet the desire of the Committee, as I understand it.

Hon. Mr. STEVENS: For goodness sake, proceed.

Mr. O'MEARA (Reading):

> The territorial land rights so claimed have been, in a remarkable degree, misunderstood and misrepresented. The Allied Tribes do not claim such territorial rights for any purpose of ejecting from the territory those who are not members of the Tribe, or disturbing any title held in good faith in this province.

The CHAIRMAN: I do not want to interfere with you, but you have not made any answer to what Mr. McPherson asked you. He asked you for a definite statement.

Mr. O'MEARA: I give my assurance to the committee that what I have in my hand does contain the answer. Will the committee please allow me a certain amount of discretion in placing it before the committee?

The CHAIRMAN: If you will put in the document, that is all that is necessary.

Hon. Mr. STEVENS: We will consider that document along with the other documents.

Mr. O'MEARA: Am I entitled to do two things, Mr. Chairman and hon. gentlemen, first, to support this petition sufficiently to place it before Parliament; and then to present the argument upon it?

Hon. Mr. STEVENS: You are not entitled to occupy the time of this committee by wandering all over.

Mr. O'MEARA: If the matter is to be seriously dealt with, it is necessary to occupy the time.

Hon. Mr. BENNETT: Mr. Chairman, will you ask the witness upon what facts he raises the question of the aboriginal title of the Allied Tribes?

The CHAIRMAN: Can you answer the question?

Mr. O'MEARA: I am ready to answer; I have the information right here ready to give the answer.

The CHAIRMAN: Well, answer it. Do not read the document, answer the questions of the Committee.

Mr. O'MEARA: The question is not the sort of question to be answered just in a few sentences.

Hon. Mr. BENNETT: Well, start with one sentence.

Mr. O'MEARA: If the Committee says to me, "Mr. O'Meara, as counsel for the Allied Tribes, do not go on presenting this case"; I suppose I must obey the Committee.

The CHAIRMAN: We are not desirous of, in any way, stopping your presentation of the case. We ask you to file the document, and to answer the questions of the Committee. There is no necessity of reading the document, you can file it with the Clerk, and the Committee will have it for their information.

Mr. O'MEARA: Apart from every other consideration, Mr. Chairman, may I point out that it is a practical certainty that the members of the Committee would desire to ask questions with regard to the very matters which I am now about to put before them.

The CHAIRMAN: The Committee have asked you questions, but you will not answer them.

Mr. O'MEARA: I refer to what I was about to place before the Committee.

Hon. Mr. STEVENS: We have asked you, half a dozen times, to file the document. If you would answer the questions that are asked, in a frank manner, we could make progress. I do not think you are doing your clients a bit of

good by the course you are taking. You must, at least, respect the wishes of this Committee as to the manner in which the case is to be presented.

Mr. O'MEARA: I will obey the wishes of the Committee.

Hon. Mr. STEVENS: I again ask you, in the interests of your clients, to file that document with the Committee, and then be good enough to answer one or two questions that have been asked. If you would do that, it would help your clients a great deal more than your persisting in this matter.

Hon. Mr. MURPHY: It is now more than half an hour since this gentleman said he would present the case to use in five minutes, and he has not yet begun to do so. How much more time is the Committee going to waste with this sort of performance?

Mr. O'MEARA: Will the hon. gentleman please accept my assertion that I never heard of any remark to the effect that I would only take five minutes.

Mr. MORIN: You made the remark yourself.

Hon. Mr. MURPHY: In view of what is contained in the record, I certainly will not accept the gentleman's assurance.

Hon. Mr. STEVENS: I know that this Committee would like to hear what any of the Indians themselves would have to say. I think that Parliament is always ready to extend to the personnel of our Indian tribes, representing themselves and others, a most courteous and kindly hearing. But I submit, not only from what I have experienced this morning, but from my knowledge of what has taken place in the last seventeen years with Mr. O'Meara acting as counsel for the Indians, that he can do nothing but mystify and becloud the issue before the Committee. That is my conviction. I have let it go until this time, but I think the Committee will agree with me that it is now apparent, that instead of listening to Mr. O'Meara, we should hear from the Indians themselves, and their representatives. We will give to them a most cordial and courteous hearing.

The CHAIRMAN: I understand Mr. Paull, is the representative of certain of the Allied Tribes, and Mr. McIntyre represents other Indians, as their counsel. Mr. Kelly is to be here on Saturday. In order to keep the matter straight before the Committee; is it the wish of the Committee that Mr. O'Meara file these documents, and we then proceed to hear what Mr. McIntyre, and the Indians he represents have to say?

Hon. Mr. STEVENS: We have to make some progress.

Mr. O'MEARA: Mr. Chairman, and hon. gentlemen; in view of the remarks made—and I have a very high regard for every member of both Houses of Parliament—may I say right now to the hon. gentlemen, that the remarks made are not well founded. Moreover, I must state that this paper is the result of the most careful thought I have been able to give it, and it has been condensed as much as possible. I ask on behalf of the Indian Tribes of British Columbia that I have the opportunity of proceeding.

The CHAIRMAN: Is it the wish of the Committee that Mr. O'Meara should read the document?

Hon. Mr. GREEN: Yes, if he is going to immediately file it.

Mr. O'MEARA: I do not intend to read the whole document.

The CHAIRMAN: You understand that the document is to be filed just as it is.

Mr. O'MEARA: Certainly, am I at liberty to read it?

The CHAIRMAN: Yes, go ahead and read it.

Mr. O'MEARA. (Reading):

> They claim such territorial rights and are seeking to establish them as a basis of equitable settlement to be brought about between the Indian

Tribes and the two governments. They think that such settlement should include their permanent rights in respect of reserved lands together with their foreshore rights and their fishing rights, hunting rights, water rights, and all other general rights, and in respect of all territory which shall be surrendered should provide for compensation to be equitably settled.

The objective of the Allied Tribes has always been, and now is, settlement—a real settlement based upon the actual rights of the Tribes and equitably brought about—such settlement as the late Mr. Harcourt, Secretary of State for the Colonies in the course of his despatch, which was sent to the Governor-General of Canada in the month of July, 1911, described as ' an equitable solution of this troublesome case.'

The allied Tribes, and all advising them professionally and otherwise, and all helping them, have done their utmost towards accomplishing such settlement by means of discussion and negotiation with the two Governments, and they continued to do so, notwithstanding serious difficulties placed in the way, notably, the McKenna-McBride Agreement, and the law of the year 1920, until on 19th July, 1924, by passing Order in Council adopting the Report of Royal Commission, the Government of Canada closed the door against the bringing about of any such settlement.

From the door so closed against them, the Allied Tribes turned to the door of His Majesty's Privy Council, which had already, for a length of time, been opened before them. Thus, judicial decision of the Indian Land controversy became their one fixed, immediate objective, and they resolved to exclusively devote themselves to the establishment of their rights.

Consequently, it will be found that the petition now before Parliament does not bring before Parliament the subject of terms of settlement, and that the prayers of the petition seek only to obtain the safeguarding of the aboriginal rights of the Indian Tribes, the defining and settling of the issues requiring to be judicially decided, and the facilitating of the independent proceedings of the Allied Tribes, now in His Majesty's Privy Council, and such other independent judicial proceedings as shall be found necessary.

I had not intended reading the whole of the document, but I think, as it has to be handed in, I will read the whole of it.

The claims of the Allied Indian Tribes, the grounds upon which their claims rest, the present position of their case in His Majesty's Privy Council, and before the Parliament of Canada, and the resulting responsibility resting upon the Dominion of Canada, are shown with some degree of fullness by three papers to which attention is requested, namely:—

1. Letter addressed by general counsel to Minister of Justice on 17th August, 1925.
2. Petition presented to both Houses of Parliament on the 10th day of June, 1926, and fully reported in both Hansards of the 14th day of the same month.
3. Notes prepared for the acting Minister of Interior by the Chairman, and the general counsel of Allied Tribes on 10th July, 1926.

I have advised the Allied Tribes that the territorial land rights which they have always claimed are constitutionally of the nature of tribal or communal ownership, have been expressly preserved by the British North America Act, and under Section 109 of that Act, are an interest in all lands acquired by the Province of British Columbia, which an Indian Tribe can assert against the province.

[A. E. O'Meara.]

Hon. Mr. BENNETT: Do you mean all the lands of the Province of British Columbia, the whole 350,000 square miles?

Mr. O'MEARA: All the lands of the Province.

Hon. Mr. BENNETT: Do you claim aboriginal title to the whole 350,000 square miles, to the whole Province?

Mr. O'MEARA: To all territory, except certain parts that have been ceded. Claim is made in respect of practically all the lands, because it is all territory of the Tribes.

Mr. O'MEARA: (Reading):

> The advice so given is supported by the report of the Minister of Justice, issued in the month of January, 1875, the opinion of Mr. E. L. Newcombe, K.C., now a judge of the Supreme Court of Canada, and stated in his book, "The British North America Acts" published in the year 1908, at page 89, and a number of judgments delivered by their lordships of the Judicial Committee of His Majesty's Privy Council, notably that delivered in the Southern Nigeria case, which was decided in the month of July, 1921.
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> In the month of September, 1916, the Allied Tribes received definite assurances of His Majesty the King, conveyed in writing by His Majesty's representative in Canada, the Duke of Connaught, that His Majesty's Privy Council would consider the petition of the Nishga Tribe, which had been presented to His Majesty in Council.
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> In the month of December, 1918, by correspondence which had been conducted between the London agents of the Allied Tribes, and the Lord President of His Majesty's Privy Council, it had been made clear, as the Allied Tribes are advised, that they are entitled to obtain judgment of the judicial committee deciding the Indian Land controversy, and that the only question then remaining open was that of procedure.
>
> The result of what has been stated in the preceding two paragraphs, as the Allied Tribes are advised, is that their constitutional right of proceeding independently in His Majesty's Privy Council, and securing judgment of the Judicial Committee has been established in the most authoritative, possible way. Having thus stated the position of the Indian case in England, I proceed to state the assurances which, on behalf of Canada, have been given to the Allied Tribes.
>
> In the month of August, 1910, at Prince Rupert, Sir Wilfrid Laurier, Prime Minister of Canada, addressing, in that capacity representatives of the Northern tribes—

Hon. Mr. BENNETT: Mr. O'Meara has stated the facts upon which he relies to support the claim with respect to aboriginal title, as referred to in the reference, but he is now going outside of the subject matter of the reference. If he were to quote judicial decisions, I would agree, but when he proposes to read extracts from addresses made by members of Parliament, I do not agree. For instance, in a court of law, you would not be allowed to quote from Hansard. It seems to me that what Mr. O'Meara now proposes to read, cannot possibly advance us. I do not want to interrupt.

The CHAIRMAN: How much more is there?

Mr. O'MEARA: Not very much more. I suggest that you permit me to finish it, whatever may be the merits of it.

Hon Mr. STEVENS: The only point is that the Committee should not permit Mr. O'Meara to place on the record a statement of the late Sir Wilfrid Laurier's, or any other prominent public man, who happened to be passing through the Province of British Columbia, and was courteous enough to receive

delegations, so that it may be quoted as having been given as evidenc to this Committee.

Mr. O'MEARA: That evidence is available, there are those in this room who can testify to what was said.

Hon. Mr. STEWART: You are now attempting to quote a statement made by the late Sir Wilfrid Laurier. You quoted one statement I made, but you failed to quote what I had said in prefacing my remarks. The same is true with respect to the statement alleged to have been made by the late Sir Wilfrid Laurier. It is like the statements which are made by public men when touring in Canada.

The CHAIRMAN: You state in the document that you want to have your case presented to the Privy Council. It is important that we should get down to what are the facts, and we can deal with them.

Mr. O'MEARA: What I am now reading is the result of absolutely condensing what is material, to the very last degree of condensing it.

Hon. Mr. STEVENS: What the late Sir Wilfrid Laurier said on his trip to British Columbia is not germane, at all, to the question.

Mr. O'MEARA: May I assure the hon. gentlemen that the facts can be shown that it was a serious interview with Sir Wilfrid Laurier, given to a delegation representing the Northern tribes of British Columbia. Sir Wilfrid Laurier said, in so many words, that he was representing the Dominion of Canada; I think the exact language was that he was the Government of Canada.

The CHAIRMAN: You have practically made your statement, and you are now adding to it by argument.

Mr. O'MEARA: I am endeavouring to answer the question.

The CHAIRMAN: The decision of the Committee will be that you must stop right there.

Mr. O'MEARA: I will obey that. I simply reserve the other matter.

Hon. Mr. MCLENNAN: Other matters of that kind. Anything else that you have you may give to us, I should think, Mr. Chairman.

Mr. O'MEARA: Mr. Chairman, it has been suggested, and is it definite, that I should not now go on with that paper any further?

The CHAIRMAN: Yes.

Mr. O'MEARA: Because the last paragraph of it is probably the most material to this Committee to have.

Hon. Mr. STEWART: Then let us have the last paragraph and file it.

Hon. Mr. MURPHY: Let it be only one paragraph though.

Mr. O'MEARA: I will read then, with your Committee's approval, the last two paragraphs of the paper. I conclude these notes by requesting special attention to the following words quoted from my letter addressed to the Minister of Justice: These words are quoted:—

> "Notwithstanding the provisions of the law of the year 1920, and the position which has arisen from that law as stated in the two papers issued by the delegates and my own letters, the serious character of which I fully appreciate, I believe that the Minister's unending difficulty might be brought to an end very simply and speedily. If you should be prepared to discuss this matter I shall be prepared to suggest for your consideration common ground which might be reached by the Government of Canada and the Allied Tribes. I would with some degree of confidence expect to convince you that it is the only common ground constitutionally and practically possible."

Those words were quoted from my letter of August, 1915, addressed to the Minister of Justice.

Then my concluding paragraph is this:—

> "The offer then made which was placed before the Parliament by paragraph 22 of the petition—that is the petition of June last—still stands. When action having been decided upon and a special committee or special committees of the two Houses shall have been appointed, I shall be prepared to bring before the special committee or special committees, particulars of the common ground to which I made reference."

Hon. Mr. BENNETT: What are the particulars of the common ground?

Mr. O'MEARA: When the committee has permitted me to sufficiently present this petition of the Allied Tribes, sufficiently prove it and sufficiently satisfy the Committee of the real claims of the Tribes, I shall be prepared to put upon this table the exact particulars of the common ground which I shall submit to the Dominion of Canada, that the Dominion and the Allied Indian Tribes of British Columbia can stand upon with a view to bringing about as rapidly as possible an equitable settlement of the whole controversy satisfactory to the Government as well as to the Indian Tribes.

Hon. Mr. GREEN: Mr. Chairman, I think we have heard enough of this piffle, of a man telling us that he will do something if we will allow him to do something else. I think we have heard all we want to hear from Mr. O'Meara.

Hon. Mr. MURPHY: The five minutes have been expanded into fifty.

Hon. Mr. STEVENS: And now he comes to the point where he wants to commence.

Hon. Mr. GREEN: And after that he will come to something else. If the Committee will permit it, he will go on for two weeks with this kind of rubbish.

The CHAIRMAN: If you have finished that statement, Mr. O'Meara, we want the document handed in to the Clerk of the Committee.

Mr. O'MEARA: I am now ready to present the petition.

Hon. Mr. STEVENS: We do not need the petition. We have been pleading with you to give us something in support of that petition, and you have up to this moment persistently refused.

Mr. O'MEARA: No, pardon me, I have been endeavouring to reach that point.

Hon. Mr. STEVENS: You have not even reached a beginning. I think this is an exhibition of what the Indian Tribes have been obliged to put up with.

Hon. Mr. GREEN: It is what they have had to put up with.

Hon. Mr. STEVENS: Yes, it is what they have had to put up with, and the manner in which they have been deluded and deceived by this man for nineteen years to my knowledge is plain. I remember the first meeting in Vancouver; I presided over it as acting Mayor and I took the stand then that his attitude was inimical to the interests of the Indians. I have been in touch with him ever since, and this is an exhibition of what these tribes have been up against for nineteen years.

Hon. Mr. MURPHY: And now he wants to do to the committee what he has been doing to the Indians.

Hon. Mr. STEVENS: I think it is an outrage myself, just an outrage.

The CHAIRMAN: Have you any further evidence you want to put in Mr. O'Meara?

Mr. O'MEARA: I beg to say that it is not an outrage at all.

The CHAIRMAN: We do not want any argument. Have you any further evidence that you want to put in in answer?

Mr. O'MEARA: The answer to that, Mr. Chairman, is this: that Mr. Beament who was with me, has discussed that matter with Dr. Scott and has suggested to him to go over the petition and point out as to which paragraph it is necessary to put in as documentary evidence. At the present moment I have not received an answer with regard to that. I hope that very little evidence is actually needed.

Dr. SCOTT: Mr. Chairman, Mr. Beament asked me to go over the petition and to designate those paragraphs on which there should be no contention and which the Department would admit. I refused to do that.

Hon. Mr. BENNETT: Naturally.

Hon. Mr. STEVENS: There are only four clauses.

Dr. SCOTT: Anyway the petition is before the Committee. I would not presume to touch the petition and decide what should be considered by this Committee. I told Mr. Beament that this morning.

Hon. Mr. STEVENS: It is not within your right to decide that, of course.

Hon. Mr. MURPHY: I propose that, if this witness has no evidence to offer, we proceed with some witness who has evidence.

Hon. Mr. STEVENS: I second that motion.

The CHAIRMAN: The motion is carried. Then will you step down, Mr. O'Meara, for the time being.

Mr. O'MEARA: Pardon me, Mr. Chairman; I must point out that I am not a witness.

The CHAIRMAN: No, you are here as Counsel and we have been hearing you as Counsel.

Mr. O'MEARA: Yes, and I must in view of my responsibility in the matter, reserve all rights and just simply reserve what further has to be said.

The CHAIRMAN: The committee will consider the question and give you another opportunity.

Hon. Mr. STEVENS: The sooner his responsibility ends the better for the Indians.

Mr. O'MEARA: I have here such documents as seem to be necessary.

Hon. Mr. GREEN: Put them in then.

Hon. Mr. BENNETT: We have asked you for them.

The CHAIRMAN: Have you any witnesses now here that you wish to call.

Mr. O'MEARA: I do not desire to call any Indian witnesses. On account of what occurred yesterday before this committee, and the communications with the province of British Columbia, and the refusal of the province to be represented before this committee, and in view of the important documentary evidence regarding that matter which is with me among these papers, I desire that the Committee take appropriate steps for securing that the Honourable John Oliver, Premier of British Columbia, should be here.

Hon. Mr. STEVENS: Rot. Nonsense. You are here to present your side of the case and we will attend to Mr. Oliver.

The CHAIRMAN: Does the committee wish to hear Mr. Paull, who is the only witness Mr. O'Meara has here?

Hon. Mr. BENNETT: I am willing to hear anything he wants to say.

Hon. Mr. GREEN: If Mr. Paull wants to be heard, yes, certainly.

Mr. O'MEARA: Mr. Paull is the secretary of the Allied Tribes of British Columbia.

Hon. Mr. MURPHY: We have been told that twenty-five times.

Mr. O'MEARA: And I am general counsel for the Allied Tribes. I have not called Mr. Paull.

Hon. Mr. BENNETT: We are calling him.

The CHAIRMAN: The Committee has a right to ask any questions the members please. You say you have no witnesses, and I ask the committee if they wish to hear Mr. Paull at this stage.

Hon. Mr. BENNETT: We will.

Hon. Mr. GREEN: Yes.

Mr. O'MEARA: I just wish to point that out, that I am not calling him.

Mr. CHAIRMAN: Make way then please for Mr. Paull.

Hon. Mr. STEVENS: I would like you to note, Mr. Chairman, that Mr. O'Meara has up to the present refused to file the documents that he claims to have. If we have not these documents it is his fault.

The CHAIRMAN: The clerk has received one document.

Mr. O'MEARA: May I repeat what I have said?

Hon. Mr. MURPHY: Oh, no. You have put in fifty-five minutes of repetition now.

Mr. O'MEARA: What I intended to convey was that I did not think, as stated in so many words—I thought that very little documentary evidence was needed, and I wanted to find out just what was needed and then commence to offer it.

The CHAIRMAN: We understand that you have put in all the documentary evidence you wish.

Mr. O'MEARA: I will do so.

Hon. Mr. MURPHY: Next witness.

The CHAIRMAN: Mr. Paull, will you take your place? You are already sworn.

ANDREW PAULL recalled.

The CHAIRMAN: You do not need to take up the time of the committee by making any further statements of your case. You are recalled for the purpose of the committee asking you questions, if they have any questions they wish to ask you.

Hon. Mr. STEVENS: I think he should take a chair and we will ask him any question we wish.

The CHAIRMAN: Do any members of the committee wish to ask Mr. Paull any question?

Hon. Mr. BENNETT: Yes, Mr. Chairman.

The CHAIRMAN: Proceed then.

By Hon. Mr. Bennett:

Q. You have been well educated I understand, Mr. Paull.—A. I attended Borden school that the government has provided us with; and I have had some experience. I have been told by my people, ever since I entered school, to make a special study of the Indian Land question; which I have done.

Q. What is your age?—A. 35 years.

Q. And you have been devoting yourself to the study of this question?—A. Yes.

Mr. MORIN: A little louder, please.

By Hon. Mr. Bennett:

Q. Can you provide the committee with any evidence on which you base the claim of the aboriginal title?—A. Yes.

Q. Will you be good enough to give it now?—A. If I may stand up, I prefer it, if you will allow me. So much has been said about the aboriginal title that perhaps the committee will be patient with me if I give it in an Indian way so to speak.

Q. Yes, that is what we want.—A. Perhaps if I tell you some of the experiences of the Indians before my time you will far sooner understand the reason why they have continued to press this claim ever since the time even prior to the advent of the white people in British Columbia. In former times the Indian Tribes reigned supreme in British Columbia. When the white people came into British Columbia, the adventurers by some means acquired pastures that the Indians had cleared, and naturally that caused trouble, and as the population increased the trouble increased.

Now, we maintain that we were never conquered. We were never conquered. And we should not be submitted to anything that a conquered people or nation has to put up with.

The Indians of British Columbia have sworn allegiance to the British Crown and flag and therefore we expect justice.

Soon after Confederation trouble arose as to the reserves that were to be allotted to the Indians and an awful amount of correspondence occurred between the local government and the Dominion Government. An agreement was entered into, namely Article 13 of the Terms of Union. I think the honourable gentlemen are acquainted with the terms of that agreement. The Indians contend that the policy that has been adhered to by the Colonial government was not a sufficiently liberal policy for the Dominion government to strictly adhere to. I find in my study of this question that in colonial days the per capita area allotted to the Indians was only about 10 acres. Now you can readily understand that that is an insufficient amount, and if the government were to adhere strictly to the terms of that 13th Article I am sure that the government would find it unsatisfactory.

By Hon. Mr. Stewart:

Q. Was that for reserve purposes?—A. That was for reserve purposes only. This Committee will find that that is altogether inadequate for the Indians.

By Hon. Mr. Bennett:

Q. Does it disturb your thought, Mr. Paull, if I interrupt you with questions? —A. It does not disturb me at all, sir; in fact I welcome interruptions.

Q. I do not want to interrupt you, but what was the condition prior to British Columbia coming into Confederation, during the days when British Columbia was a Crown Colony? Just give us the situation, if you do not mind, as you find it at that time.—A. From the Indian viewpoint?

Q. Yes.—A. I find that each tribe had a certain territory which was recognized by the other tribes as the territory of that particular tribe. The Indians of that particular tribe would hunt and fish and exercise all the privileges of free men in that tribal territory. The same would apply to an Indian in the next territory. Since the white men came to British Columbia these privileges have gradually been diminished.

Q. What was the condition, if you know from your study, at the time British Columbia became part of the Dominion, before the 13th Article? I wish to know the condition of the Indians with relation to the land.—A. They thought they owned the whole country.

By Hon. Mr. Green:

Q. Between 1843 and 1871?—A. Oh, I am sorry to say that I have not documentary evidence to substantiate the position of the Indians at that time. Perhaps this is what the honourable gentleman wishes. I was employed by the government in the year 1923 to visit the southern part of British Columbia, and during the course of my work I found out what was the position of the Indians at that time. I visited the west coast and the Indians related to me their knowledge of the former conditions. One Indian told me that he was quite a youngster at one time when a battleship visited their country and a man by the name of Brown was the spokesman for the government officials who came in what he called a battleship. Mr. Brown is alleged to have said this:—"Indians; we are going to occupy your country. We have been sent here by the Queen and we are going to govern this country. Whenever we sell a piece of land we will put into a fund one-quarter or one-third"—the Indians were not sure, they were not conversant with fractions or decimals, but anyway they were told that a certain portion of the proceeds of any sale of lands would be allotted to a fund for the Indians, another portion would be sent to the Queen, and the other portion would be held by the local authorities.

Now I also found that many of the Indians adjacent to the city of Westminster and on the southern coast made a similar statement.

The Indians also related to me that Governor Douglas held a meeting of a great number of Indians in the city of Westminster, wherein he made a similar statement, and that one Father Foquet, missionary, was the interpreter.

In order to try and ascertain whether the statement of the Indians were correct or not I wrote a letter to Father Cherouse, another missionary, and asked him to search the diary of Father Foquet and see if there was anything noted down in his diary that would in some measure coincide with the statement of the Indians.

Father Cherouse wrote to me saying that he had searched the records, the diary of Father Foquet, and he found the statement that on a certain day Governor Seymour met two thousand Indians and sixty chiefs at Westminster which was then called Queensborough.

Q. Have you got that letter?—A. I am sorry to say that I have not, but I have wired for it and it will be here to-morrow. I will place it before the committee before I leave.

Q. Do you remember the date of the letter? New Westminster was not called Westminster then?—A. No, it was called Queensborough. The date of that reported meeting with the Indians is given in the letter from Father Cherouse. Now that was the position of the Indians at that time, that they were going to be dealt with justly and that a time would come when they would be properly compensated according to the alleged agreement that was entered into by Governor Seymour and these men who represented the Imperial Government on this war-ship.

Now my investigations also show this. I have found that some similar statement was made in the northern country. And prior to Confederation that was the mind of the Indians.

By Hon. Mr. Stewart:

Q. Mr. Paull, was Mr. Brown associated with Governor Douglas?—A. No Sir.

Q. There were two different times?—A. Two different times.

By Hon. Mr. Bennett:

Q. Mr. Seymour would be commander of the ship?—A. No, he was the Governor. Governor Seymour was the man who made the statement at Queens-

borough. Now we cannot find any documentary evidence to substantiate this, but that is what was in the mind of the Indians as to what occurred.

Q. Apparently the thought in the mind of the Indians, as it comes to you by tradition, is that a battleship or a warship, and the Governor or Governors and representatives of the King or Queen, stated that they were taking the country and they promised that they would deal with the Indians in a certain way.—A. Yes.

Q. And that was that they would provide them with portions, we will put it, of the monies that might come from disposing of the property.—A. Yes.

By Hon. Mr. Murphy:

Q. Mr. Paull, may I ask you this question: Do I understand you to say that there was an entry in the diary of the missionary whom you mentioned?—A. Yes.

Q. And that entry is in corroboration of this statement that you make.—A. Yes, but not in toto.

Q. Will this letter you say you expect to-morrow, give the text of the entry in the diary?—A. It will, yes. Now that was the mind of the Indians, I must suppose, prior to Confederation. Now at a time soon after Confederation steps were taken to allot the different reserves to the different Tribes.

Now I must say this, that the Indian in British Columbia is an Indian who has a special location for each different season. During the fishing season, at certain times of the fishing season he would be in one location. At berry-picking time he would be in another location. During the hunting season he would be in another location. In every one of these locations he would have a place cleared and a little shack built.

Now I think it was the intention of the governments that all existing Indian settlements were to be made Reserves. But my information is that when the alloting Commissioners visited these different villages, oftentimes the owners or occupants of these different little houses and settlements were not at that very spot at the time of the visit of the Commission. The result was that many of these Indian villages were not made reserves.

By Hon. Mr. Stevens:

Q. That is the Commission of 1912?—A. No, the Commission of 1871.

Q. At Confederation?—A. Yes, and up to 1878 or something like that.

By Hon. Mr. Bennett:

Q. That is the Allotment Commission?—A. The Allotment Commission, yes. Now even to-day, even after the work of this 1912 commission there are yet old Indian settlements that are not made Indian reserves, but I will deal with the 1912 commission later on.

By Hon. Mr. Stewart:

Q. Mr. Paull, do you state that the commission of 1872 were carrying out, at least partially, if not altogether, the arrangement made by Governor Seymour previous to Confederation?—A. No, I think they were carrying out and I know, after reading the correspondence between the two governments, that they were trying to carry out the terms of Confederation in that 13th Article, whereby the province was to allow the Dominion to establish Reserves here and there.

By Hon. Mr. Murphy:

Q. And you are explaining why they were not established in certain places, because of the season. That is the commission might visit a settlement in the berry-picking area during the fishing season?—A. Yes.

Q. And the Indians were not there but were in a fishing settlement?—A. Yes.

By Hon. Mr. Bennett:

Q. Whereby they lost their reserves for berry-picking?—A. Yes, that is what I am explaining. Now I am not going to take up the time of the Committee by telling them all the trouble that occurred as a result of that.

By Hon. Mr. Stewart:

Q. Mr. Paull, what I was trying to get was this: Evidently there was an arrangement made by Governor Seymour, with the Indians, by which the Indians understood that they were to have a beneficial right in these lands, and that the commission, following the Act of Union—we have not got the date of Seymour's visit—you say you will fix that definitely in a letter to-morrow? —A. Yes.

Q. That under the Act of Union when there was an attempt made to carry out what evidently was the clear intent of that agreement for the allotment of lands for the Indians, it was merely carrying out what had been agreed upon before?—A. Evidently so, yes. I say we must presume that Governor Seymour might have said this: We will set aside Reserves for your exclusive use. I presume that he said that. And the other portions of the province we will sell, and so much will go to Her Majesty, so much to the local government and so much to the Indians.

By Hon. Mr. Bennett:

Q. That is your understanding?—A. That is my understanding.

Q. Do I follow you that your tradition, is that your people were actually upon reserves at the time British Columbia came into Confederation?—A. May I ask, what do you mean by Reserves in that question?

Q. That is what I want you to make clear to me.—A. Prior to Confederation, my information is that there were some portions recognized by the Colonial Government as reserves for Indians, but in the majority of cases they were settlements, whether they be called reserves or some other name; they were in existence and occupied by the different Indians. But I do not think they were recognized as reserves, and I contend that the Colonial Government did not have time to go through all the province and have all the different settlements recorded as Indian Reserves.

Q. Some were though?—A. Yes, some were I think. Yes, some were.

By Hon. Mr. McLennan:

Q. But certain lands were in occupation of the Indians at different seasons of the year, although they were not specifically set apart as reserves for them?—A. Yes.

Hon. Mr. BENNETT: They were not recorded as Reserves.

Hon. Mr. MCLENNAN: No.

By Hon. Mr. Bennett:

Q. You were going on with the commission of 1872 I think?—A. Yes. Now before this Allottment Commission had time to complete its work, Indian clearings, pastures and so forth were being occupied by white settlers, either by preemption or in some other way, and the result was that there was a lot of trouble and the Indians were protesting and so forth. Visits were made to the different localities by the Commissioner of Indian lands, at that time Mr. Powell.

And then, in 1873, I find there was a petition signed by the Indians of the Lower Fraser River—I would say from Hope down to the Mouth of the Fraser River, and from the southern coast to Bute Inlet. The Indians signed a petition praying that they be treated in this way, that there should be a declaration that

sufficient land should be surveyed for their exclusive use and benefit. I refer to "Journals and Sessional Papers (1875)". I will be very pleased if that book can be brought here so I can refer to it.

Now, I would like to deal with Article 13.

By Hon. Mr. McLennan:

Q. Before you go on, may I ask you about the pastures. The Indians still had cattle and horses?—A. Yes, principally horses.

Q. The pastures were being used by your people?—A. Yes, they were really used by the Indians. There was a lot of trouble about their stock, especially in the Fraser Valley.

By Hon. Mr. Bennett:

Q. The Fraser Valley was rich pasture land?—A. Yes. The condition as to that was that the Indians would have the pasture, and in the absence of the Indians, some white man would come and pre-empt that pasture. On the Statute books of the Province there was the provision that whoever owned the pasture could take action against the one who encroached upon the pasture. The result of that was that the Indians were being prosecuted because the stock were feeding on the pasture which had belonged to the Indians prior to pre-emption.

By Hon. Mr. Stevens:

Q. The difficulty between the pre-emptors and the Indians was a matter of discussion and adjustment, and the difficulty was practically removed?—A. Owing to the change of conditions, the difficulty automatically removed itself.

Q. I may say that I can recall many instances of that character, but those difficulties have gradually passed away; the Department at Ottawa, and the local authorities have made efforts to get those matters ironed out?—A. Ironed out to some extent, yes.

Now, I intend to deal with Article 13, when the book arrives. On behalf of the Indians, I want to say they have tried to adjust the matter as between the Province and the Dominion as to the allocation of the reserves, and to live up exactly to the meaning of Article 13, but it has been shown that Article 13 is altogether inadequate. I say that because the Province of British Columbia contends that they have satisfied all their obligations by the allotment of those reserves. Now, I want to make myself understood as to that. The Province says "We have satisfied any obligation that is ours."

By Hon. Mr. Bennett:

Q. Under Article 13?—A. Under Article 13. These reserves were allotted to the Indians, but, to put it plainly, the Indians say. "You did not allot enough."

Q. It is your contention that the Dominion Government, under Article 13 should press the Province of British Columbia for further reserves?—A. Yes.

Q. You contend that the reserves allotted by Article 13 are not sufficient or adequate?—A. Yes.

By Hon. Mr. Barnard:

Q. Was not an agreement made as a result of this agitation?—A. Yes, sir.

Q. And the reserves were increased?—A. Increased and decreased.

By Hon. Mr. Bennett:

Q. The reserves were readjusted?—A. The reserves were readjusted.

By Hon. Mr. Barnard:

Q. Where one reserve was not taken by the Indians, it was taken back by the Government, and lands were given to the Indians in other places?—A. All that was done, of course, without the knowledge or consent of the Indians.

By Mr. McPherson:

Q. What was the acreage allowed the Indians per head?—A. To my knowledge, there is no specified number of acres agreed upon. For instance, on the coast, in my tribe, they have, per capita, sixteen and a fraction acres, whereas in the Interior of the Province, where grazing lands are acquired, the per capita acreage is far in excess of that.

By Hon. Mr. McLennan:

Q. The coast tribes are mainly engaged in fishing.—A. Fishing, logging, working in the mills, and so forth.

Hon. Mr. STEVENS: And packers.

By Hon. Mr. Bennett:

Q. And workers in the canneries?—A. Yes.

Q. Now, Mr. Paull, you know that the Dominion Government have been guardians or trusteees for your people?—A. Yes, sir. I know that; and all the Indians know that.

Q. And you look to the Dominion Government, as your guardians?—A. We do.

Q. And as your trustees?—A. We do. And we say to the Dominion Government, you have a sacred duty to perform towards us. Now, there is a memorandum in that book "Journals and Sessional Papers, (1875)" which was written by the Hon. David Laird, the then Minister of the Interior on Article 13, wherein he states that living up to the exact terms of Article 13 is altogether inadequate. Now, that memorandum was adopted, if my memory serves me right, by the Privy Council of Canada, and it was ordered that a copy be submitted to the Secretary of State for the Colonies, and to the Lieutenant-Governor of British Columbia. I presume that was carried out.

Q. That letter is also in the "Journals"?—A. Yes. That is the position taken by the Dominion Government, who were the trustees of the Indians at that time, as well as now; that Article 13 was altogether inadequate.

Q. Would you mind just there telling how many Indians there were at that time in British Columbia?—A. The only authoritative information we have is the statement by Governor Trutch who estimated the Indian population, prior to Confederation at about 100,000.

Dr. SCOTT: I think I made the statement, in the letter to Sir John Macdonald, which was read yesterday, that the population of the Indians prior to Confederation was 70,000.

By Hon. Mr. Stevens:

Q. The population has since declined?—A. Oh, yes.

By Hon. Mr. Bennett:

Q. At what do you estimate the number now?—A. 23,000, according to Dr. Scott. I wish the Committee would bear in mind, when dealing with the Indian question as it relates to British Columbia, that one-quarter of the Indian population of Canada is in British Columbia. In Saskatchewan, there are only perhaps 4,000, or 5,000 Indians; they certainly would not require the amount that would have to be spent in a province where there are 25,000 Indians.

Q. What bothers me, is this: at the time of Confederation, when the allotment of lands was made, there were about 70,000 Indians; now, there are about 23,000, and the 23,000 have as much, or a greater area than the 70,000 then had? —A. Perhaps that is true. But as the Indians advance in civilization, and become agriculturists, being taught in the schools how to raise stock, and become farmers, they require more land; whereas my ancestors did not know anything about that.

By Hon. Mr. Barnard:

Q. In relation to the question Mr. Bennett has asked you; there is a great deal of land held as reserves by the Indians, that has been leased to outside parties, is there not?

Hon. Mr. STEVENS: Land that was leased on behalf of the Indians.

Hon. Mr. BARNARD: It is land the Indians do not use.

By Hon. Mr. Barnard:

Q. I am informed that land belonging to the Indians has been leased to people other than Indians, in some 150 cases, or thereabouts; do you know anything about that?—A. I know there are a great number of leases in British Columbia, but I do not think the number of leases should be taken to mean that the area is great. Most of the leases are for roads, waterways, and so forth.

By Hon. Mr. Stevens:

Q. And for grazing?—A. There are leases given for grazing lands in the Interior.

Q. And leases given for the operation of saw mills?—A. Yes.

Q. And other uses of that character, on the coast, such as canneries?—A. Yes. At Duncan there was a 99-year lease given to the Agricultural Association for the land where they held their exhibition.

By Hon. Mr. Barnard:

Q. As a matter of fact, there is something like $20,000 a year received as rentals, by the Indians, for those leased lands?—A. I am not prepared to estimate the amount.

Hon. Mr. STEVENS: The record will show that.

Hon. Mr. BENNETT: The point is there is considerable land that is leased.

By Mr. McPherson:

Q. While there were 70,000 Indians at the time of Confederation, and a certain allotment was made to them, in addition to that, there were all kinds of free lands on which they could hunt?—A. Yes.

Q. And pick berries?—A. Yes.

Q. And now, although the number of Indians has been reduced, they are more restricted to the actual use of the land set apart for them, than they were? —A. Yes.

Hon. Mr. BARNARD: That would not apply on the coast.

Mr. MCPHERSON: That may account for the apparent difference in the number of Indians allotted to the same area.

Hon. Mr. GREEN: In the early days, the Indians did not go in for agriculture, at all.

WITNESS: I would like to correct what I have said. In my preliminary remarks, I think I stated that the present existing reserves were not then in existence as reserves. Of course, 70,000 Indians had more land than what the Indians have now. Why? Because they occupied all the area within their tribal territories. Do I make myself clear?

By Hon. Mr. Stevens:

Q. In other words, do you mean that some of the land occupied by the Indians at that time, before Confederation, was not recorded as reserves in the allotment that was made after Confederation?—A. Not recorded, no. For instance, the Saanich Indians ranged from the west side of Howe Sound, up Howe Sound, along the Squamish Valley.

Q. That took in the city of Vancouver?—A. Yes. That is where they used to camp. They now have only small portions in that area.

By Hon. Mr. Bennett:

Q. I suppose there was no community of interest among the Indians?—A. Yes.

Q. Was there any inter-tribal interest?—A. No, the only inter-tribal interest they had was that they had an alliance in case of war.

Q. Each tribe occupied its own reserve, separate from the other Indians?—A. Yes.

Q. There was no community interest among the Indians?—A. No. If another tribe wanted a certain portion of land, they would have to fight for it.

By Hon. Mr. Stevens:

Q. There was constant warfare between the Indians at Port Simpson and the land to the South?—A. Yes.

By Hon. Mr. Bennett:

Q. Will you give us an idea of the age of the oldest man from whom you have been able to gather traditions?—A. I think the oldest person from whom I gathered traditions in connection with the transition of the Indians was the great granddaughter of the original chief Capalino who met Captain Vancouver in Burrard Inlet.

Q. When you were able to talk with her, what would be her age?—A. Pretty close to 90.

Q. Had she still possession of her faculties?—A. Oh, yes, she had possession of her faculties.

Q. And she could tell you of the past traditions?—A. Yes. In order to further my study, I found it necessary not only to search the records of the white people of the district, but to listen to the traditions of other people.

By Hon. Mr. Stevens:

Q. Was that Joe Capilano's mother?—A. No, Jos. Capilano was a distant relation.

By Hon. Mr. Bennett:

Q. What year did Captain Vancouver come there?—A. I think it was the year 1792.

Hon. Mr. McLennen: I think it was before 1792.

Witness: Does the Committee wish me to read the petition of the Indians, that I spoke of, that was made on July 14th, 1874?

By Hon. Mr. McLennan:

Q. Is that the earliest document to which you refer?—A. It is a petition written by the Indians soon after Confederation; made to the Indian Commissioner for the Province of British Columbia.

By Hon. Mr. Bennett:

Q. He was a Dominion official?—A. Yes.

Q. And it was in consequence of article 13?—A. Yes. This is the introductory remark:

> Having been, along with some others, commissioned by the chiefs to present our common petition to you, we have come down to New Westminster yesterday, and after consultation, we came to the conclusion to send the petition by mail.
>
> You have told Alexis and myself not to go down till you send notice.
>
> We expect to hear from you through Reverend Father Durieu, at New Westminster.

This is a petition to the Indian Commissioner for the province of British Columbia:

> The petition of the undersigned, chiefs of Douglas Portage, of Lower Fraser, and of the other tribes on the seashore of the mainland to Bute Inlet, humbly sheweth:
>
> 1. That your petitioners view with a great anxiety the standing question of the quantity of land to be reserved for the use of each Indian family.
>
> 2. That we are fully aware that the government of Canada has always taken good care of the Indians, and treated them liberally, allowing more than 100 acres per family; and we have been at a loss to understand the views of the local government of British Columbia, in curtailing our land so much as to leave in many instances but few acres of land per family.
>
> 3. Our hearts have been wounded by the arbitrary way the local government of British Columbia have dealt with us in locating and dividing our Reserves. Chamiel, ten miles below Hope, is allowed 488 acres of good land for the use of twenty families; at the rate of 24 acres per family; Popkum, eighteen miles below Hope, is allowed 369 acres of good land for the use of four families: at the rate of 90 acres per family; Cheam, twenty miles below Hope, is allowed 375 acres of bad, dry, and mountainous land for the use of 27 families: at the rate of 13 acres per family; Yuk-yuk-y-yoose on the Chilliwack River, with a population of seven families, is allowed forty-two acres, five acres per family; Sumaas (at the junction of Sumaas River and Fraser) with a population of seventeen families, is allowed 43 acres of meadow for their hay, and 32 acres of dry land; Keatsy, numbering more than 100 inhabitants, is allowed 108 acres of land. Langley and Hope have not yet got land secured to them, and white men are encroaching on them on all sides.
>
> 4. For many years we have been complaining of the land left us being too small. We have laid our complaints before the government officials nearer to us. They sent us to some others; so we had no redress up to the present; and we have felt like men trampled on, and are commencing to believe that the aim of the white men is to exterminate us as soon as they can, although we have been always quiet, obedient, kind, and friendly to the whites.
>
> 5. Discouragement and depression have come upon our people. Many of them have given up the cultivation of land because our gardens have not been protected against the encroachments of the whites. Some of our best men have been deprived of the land they have broken and cultivated with long and hard labour, a white man enclosing it in his claim, and no compensation given. Some of our most enterprising men have lost a part of their cattle, because white men had taken the place where those cattle were grazing and no other place left but the thickly timbered land, where they die fast. Some of our people now are obliged

to cut rushes along the bank of the river with their knives during the winter, to feed their cattle.

6. We are now obliged to clear heavy timbered land, all prairies having been taken from us by white men. We see our white neighbours cultivate wheat, peas, etc., and raise large stocks of cattle on our pasture lands, and we are giving them our money to buy the flour manufactured from the wheat they have grown on same prairies.

7. We are not lazy and roaming-about people, as we used to be. We have worked hard and a long time to spare money to buy agricultural implements, cattle, horses, etc., as nobody has given us assistance. We could point out many of our people who have those past years bought with their own money ploughs, harrows, yokes of oxen and horses; and now, with your kind assistance, we have a bright hope to enter into the path of civilization.

8. We consider that eighty acres per family is absolutely necessary for our support, and for the future welfare of our children. We declare that 20 or 30 acres of land per family will not give satisfaction, but will create ill feelings, irritation among our people, and we cannot say what will be the consequence.

9. That, in case you cannot obtain from the Local government, the object of our petition, we humbly pray that this, our petition, be forwarded to the Secretary of State for the provinces, at Ottawa.

Therefore, your petitioners humbly pray that you may take this our petition into consideration, and see that justice be done us, and allow each family the quantity of land we ask for.

And your petitioners, as in duty bound, will ever pray.

That is signed by a number of chiefs of Douglas Portage, Lower Fraser, and Coast Indians.

By Hon. Mr. Stevens:

Q. Would you mind referring back to the quantity of land allocated to the Cheam Band?—A. 375 acres of bad, dry, and mountainous land for the use of 27 families.

Q. That is rather interesting, because I think it bears on the whole subject. For the last 15 years, to my knowledge, and for many years before that, the Cheam Band have owned what is known as Seabird Island?—A. The Indians are fighting for Seabird Island.

Q. As a matter of fact, the Cheam Band claim ownership of that Island?—A. Not only the Cheam Band, but the Indians from Thompson, and other Indians.

Q. Seabird Island is generally recognized as belonging to whom?—A. I am not sure of that.

Hon. Mr. Stevens: Could Dr. Scott tell us?

Dr. Scott: I think the Department has decided as to the title of the Island, but I cannot give you the names.

By Hon. Mr. Stevens:

Q. No matter to whom the Island belongs, that would indicate that the 27 families of the Cheam Band only had a few acres. It seems to me the matter must have been adjusted, because here is a piece of land, 6,000 acres allotted to them, subsequently?—A. Yes.

Q. I understand there is farming land in the centre of the island, also at the westerly end, but outside of that land, there has been no clearing undertaken in the last 30 years; that is correct, is it not?—A. That is a correct statement.

Q. And furthermore, all the cedar, which is very valuable, and other timber on that island has been sold on behalf of the Indians?—A. Yes.

Q. Indicating that this prayer received consideration and some response?—A. You mean that Seabird Island was included as a reserve for the Cheam Band?

Q. Yes?—A. The position in regard to Seabird Island is rather peculiar. Several tribes have been fighting for the ownership of that particular reserve.

Q. I can say this of my own knowledge, that some of the families of the Cheam Band did reside on Seabird Island within the last 20 years?—A. Yes, I think they did.

Q. My point is that they complain, perhaps justly, in that petition of its being a too restricted area; but the fact of Seabird Island, in part at least, being allocated to them, would indicate there was a response to their prayer, and an adjustment?—A. That would indicate it was the case.

Dr. SCOTT: That was after the date of that petition. A Royal Commission was appointed to investigate, as a result of this petition. The Indians and the Government got together, and decided upon what land should be reserved. That was the first real attempt on the part of the Government to adjust the difficulty, with respect to reserves, and to carry out the terms of Article 13.

WITNESS: Now, I think that in justice to the people I represent, since the Province of British Columbia, as I suppose, depends on Article 13 as the machinery for enactment through which they have exercised all their obligations, I should file, and read, this memorandum which was adopted by Order-in-Council on the 4th of November, 1874.

By Hon. Mr. Bennett:

Q. Is not this a fact, that in consequence ot the petitions signed by the Indians, and presented to the Government at Ottawa, the Government sent Mr. Laird out. He went and made an investigation, and a report. That is what you have reference to?—A. That must have been as the result of some investigation. There was a lengthy report written showing what were the actual conditions, made by the Hon. David Laird. Perhaps you might appreciate the value of the memorandum he made, if I were to read the notation by the Privy Council. This is a copy of the report of the Committee of the Privy Council, approved by His Excellency the Governor General on the 4th of November, 1874. It states that the committee of the Privy Council have given their attentive consideration to a memorandum of the Honourable the Minister of the Interior in reference to the unsatisfactory state of the Indian lands question in the province of British Columbia, and they respectfully report their entire concurrence in the view and recommendations submitted thereunder. Then they recommend that a copy of this minute, when approved by His Excellency, be transmitted to the Lieutenant-Governor of British Columbia, in the hope that the views entertained by the Dominion Government on this important question as embodied in the said memorial may meet with an early and favourable consideration at the hands of the Government of British Columbia. They further advised that a copy of this minute and the annexed memorandum be transmitted by His Excellency to the Right Honourable Her Majesty's Secretary of State for the Colonies, accompanied by copies of each of the other documents submitted as the Minister of the Interior might think necessary to enable Lord Carnarvon to understand in all its bearings the great national question now seeking solution at the hands of the Dominion and of British Columbia.

Mr. Chairman, this great national question was then in existence in 1874, and it is equally a national question, and it is yet before us in 1927.

By Hon. Mr. Bennett:

Q. If I may interrupt you for a moment; after that Allotment Commission completed its work, an agreement was arrived at between the goverments of

the Dominion and Mr. McBride's government, the government of British Columbia, which purported to be a final settlement of the differences.

A. The intention of the two governments was that it was to be a final settlement, but it was not a final settlement.

By Hon. Mr. Murphy:

Q. Why?—A. Because it only dealt with Indian Reserves, and did not deal with the fore-shores, the hunting rights, the fishing rights and a number of other things. To put it squarely before you, the agreement thinks that it is to be a final settlement. I will read the very words of the agreement:—

> Whereas it is desirable to settle all differences between the governments of the Dominion and the province respecting Indian lands and Indian affairs generally in the province of British Columbia;

Therefore the parties above named have, subject to the approval of the governments of the Dominion and of the province, agreed upon the following proposals as a final adjustment of all matters relating to Indians affairs in the Province of British Columbia.

By Hon. Mr. Murphy:

Q. That is the preamble is it to the McKenna agreement?—A. No, that is the agreement.

By Hon. Mr. Bennett:

Q. What is the date?—A. The 24th day of September, 1912.

Q. And that was in consequence of Mr. McKenna having gone out with a commission and investigated the matter on the ground, and I am informed that your people had an opportunity to be heard?—A. That is correct.

Q. And they did, in fact, make representations to Mr. McKenna?—A. And his co-commissioners, yes.

Q. And as a result an agreement was arrived at which was adopted, between the province and the Dominion?—A. That is correct.

Q. And that purports to be a final settlement?—A. It did purport to be a final settlement.

Q. Now your people knew what Mr. McKenna and his associates were there for and you presented your case to him as best you could?—A. Yes, from time to time. Yes.

Q. Now you knew the settlement was being made?—A. We were told. We were not in possession of the actual Order in Council or the actual agreement.

Q. No, but you got the agreement afterwards?—A. Afterwards, yes. I can speak with some knowledge of this because I was one of the interpreters.

Q. You were a young man of 21 at that time?—A. Yes, I was an interpreter.

Hon. Mr. STEVENS: He was active. I recall him very well at that time.

WITNESS: Now, in justice to the commission I must say that they said they could not deal with the Indian title, and they had no power to deal with fisheries.

By Hon. Mr. Stevens:

Q. That is what the commission said?—A. Yes, the commission so reports. Now that is an illustration of one of the failures of the commission.

To prove my contention, I will read from Volume III of a report of the commission in connection with fishing rights in British Columbia, a minute and resolution of the 6th June, 1916:—

> Whereas former Indian Reserve Commissioners, acting under joint government agreements, allotted defined fishing rights to certain Tribes or bands of Indians in British Columbia;

And whereas this Commission has been unable to obtain any advice from the law officers of the Crown in right of the Dominion of Canada, as to the authorities of the said former Commissioners to allot such fishery rights;

And whereas this Commission desires that any right or title which Indians may have to such allotted fisheries may not be adversely affected by the action of this board;

Be it resolved that the expense to which the allotting Commissioners have authority to allot such fishery rights, this Commission in so far as the power may lie in it so to do, confirms all such allotted fishery rights as set forth in the schedule hereto.

Now that is conclusive that the 1912 commission was aware that it did not have power to deal with it.

By Hon. Mr. Bennett:

Q. Not to deal with it? They had no power to create new allotments, but they confirmed the existing fishing allotments as made by the original Allotment Commission; that is so is it not?—A. May I answer that in this way?

Q. But that is so, they did confirm the allotments of the original Allotment Commission with respect to the fisheries?—A. Yes.

Q. But they declined for the reasons given, to make any new allotments?—A. They did.

Q. Now you complained that you should have more fishing allotments, and the government of British Columbia would not become a party to granting any further allotments.—A. Yes, we do contend that we should have more fishing places. More fishing stations; and our fishing rights should be explicitly defined so that there would be no question.

Q. Meaning what? That your fishing rights should be exclusively defined, meaning what?—A. Meaning that we have an absolute right to take fish for food wherever and whenever we want to.

By Hon. Mr. Stevens:

In other words, Mr. Paull—this I think is the point, Mr. Bennett—your people claim that in disregard of any provincial law preserving fisheries on any stream, you should have the right to take fish from that stream for your own purposes.—A. Certainly.

Q. Irrespective of place, time, or circumstance?—A. Yes, as we had from time immemorial. Because the amount of fish that the Indian takes is so negligible in comparison with what the big canneries take. It is hardly noticeable. The amount of fish that the Indians in British Columbia take for their own use—

By Hon. Mr. Bennett:

Q. But, Mr. Paull—I can see that you are a man of more than ordinary understanding—A. I thank you.

Q. If the province makes allotments, or if they issue licenses and then they allow twenty thousand people to disregard the licensed area, that would create chaos. You see that yourself, do you not?—A. Yes.

By Hon. Mr. Stevens:

Q. You would not insist upon the absolute right in disregard of all other regulations or practices to the full limit of what you have stated, would you?—A. I think we are civilized enough to come to some kind of an agreement, but we do object to being out at the mercy or at the dictates of an official, an inspector.

By Hon. Mr. Bennett:

Q. Or a lessee?—A. An inspector, or a cheechaco, you know what I mean Mr. Stevens? He is one who comes from some foreign country to our country, and all he knows is the Fishery Act which he has before him and he exercises power under that irrespective of sympathy with Indian customs. Just to give you an illustration, I think you will not blame me for saying this in regard to fishing. On the west coast of Vancouver Island, in the Antinak Lake, and in Nitinat Creek, there was an old Indian there with only one leg, and another who was blind, and another so old he could hardly move; they were setting a little net in the stream to catch fish for food. The officer of the Crown came there and smashed their canoe, smashed up their nets and fined them $10 right there on the spot. Now it is that sort of treatment that we do not want to have occur.

Q. Did they have the money to pay the fine?—A. I think the other Indians paid it for them.

By Hon. Mr. Stevens:

Q. Was he a provincial officer?—A. I think he was Dominion. They were asking me to get it back for them. That was some years ago.

By Hon. Mr. McLennan:

Q. Was a complaint made to the department about that?—A. Yes, I included it in my report.

By Hon. Mr. Stevens:

Q. What about Mr. Ditchburn?—A. I included it in my report to Mr. Ditchburn.

By Mr. McPherson:

Q. I suppose, Mr. Paull, that the inspector was carrying out the letter of the law as it stood?—A. Absolutely in the absence of some definite understanding between the government and the Indians. Now I have gone to Mr. Found on numerous occasions, nearly every occasion on my visits to Ottawa, and this is my fifth visit, and I am sorry to say I cannot get any sympathy from him. He wants to proceed on lines that may be right in theory, but to carry them out is impossible.

By Hon. Mr. Stevens:

Q. Mr. Paull, nearly all, or a very large number of our coast Indians, get employment from the canneries.—A. They do.

Q. And they get usually very remunerative employment.—A. If there is lots of fish they get employment, yes.

Q. And usually they get remunerative employment.—A. Yes, they do.

Q. And some years they make very much money.—A. Yes.

Q. Now, don't you think, and do your people not consider, that in a large measure that employment will compensate you for the restrictions placed upon your alleged absolute rights to fish at all times?—A. I am afraid I cannot regard that as compensation for these restrictions.

Q. Then, consider this question. Take the case you mention of those three Indians; as pictured by you that is rather a pathetic case; but suppose they had been three good husky Indians and here was the salmon running in the sock-eye season we will say, and they had put a net across the mouth of the stream, stopping the salmon from going in, and they were selling those salmon, not using them for their own food, but selling them, then that fishery inspector would have been justified in equity as well as by law in doing what he did, would he not?—A. Absolutely, perhaps, in that case; but we include in our requests, or in our sub-

missions—which I may have to deal with later on—that some areas, not at the mouth of streams where the fishes hatch, but some areas be set aside where the Indians could fish commercially.

Q. In other words give them leases of areas?—A. Leases. Just as you have Indian Reserves.

Q. There is good sound sense there I think.—A. So that only Indians could fish there, for commercial purposes, and exclude the Jap and the other foreigners, but the Indian or the young man catching fish in streams where the fish hatch I am not in sympathy with him.

Q. You realize that it is in the interests of the Indian and the white man both, that we should preserve the freedom of the fish in their hatching ground. —A. Yes, but not at the expense of depriving the Indians of his fish for food.

By Hon. Mr. Barnard:

Q. Is it not the case that in some of the streams the Indians are accorded privileges that are not accorded to anyone else, such as the establishment of weirs which are against the law, but they are allowed.—A. I don't think they are allowed to have weirs now.

Q. I think you will find the weirs there and lots of them.—A. There were some in Kowichan River, but the owners were prosecuted.

Q. That is the river I had in mind.—A. Yes, they were prosecuted, and the regulation in that river is that they catch fish in the mouth of the river.

By Hon. Mr. Bennett:

Q. Let me see if I follow you about the fish. You claim that you should have special consideration at the hands of the government?—A. Yes.

Q. You have not asserted that you have the right to all the fisheries, but you say you should receive consideration with respect to catching fish for food.—A. We do not pretend to say we have the right to all the fisheries, superseding the right of the canneries' interests and so forth, we do not claim that.

Q. You do not set that up against the Government.—A. No, absolutely not.

Q. You say the Government should consider that you have original rights as a matter of grace of the Sovereign.—A. Yes, and we should be allowed to take fish for food wherever and whenever we want to. But for commercial purposes there should be special waters set aside for the Indians only.

By Hon. Mr. McLennan:

Q. What obstacles are there to that now? The Indians are qualified to get those are they not?

Hon. Mr. BENNETT: They cannot compete.

Hon. Mr. MCLENNAN: We should try to help them in that if we can.

WITNESS: May I have the question again.

By Hon. Mr. McLennan:

Q. What is there to interfere with an Indian or a group of Indians getting a license to fish in certain places, the same as anyone else?—A. There is nothing preventing him, but he has to fish in competition with numerous other fishermen. As an illustration: In Allert Bay, at the mouth of the river there, for some years there were only four or five seine boats manned by Indians, and they made good money. To-day I think there is 20 or 30 seine boats fishing at the mouth of that little stream for sock-eye.

By Hon. Mr. Stevens:

Q. Do you not find the Japanese competition very keen?—A. It was very keen prior to the time that this enactment came through whereby they had to be gradually put off.

Q. That was in 1921?—A. Yes, they were getting awfully fierce. They had a monopoly of the fishing on the west coast of Vancouver Island.

Q. Now the Indians are getting more employment than they were prior to 1921 and 1922?—A. Yes.

By Hon. Mr. McLennan:

Q. What you are putting forward is that the Indian, on account of his long residence in the country, should be given as favourable treatment as possible in prosecuting the fisheries in a commercial way.—A. Yes.

Hon. Mr. STEVENS: I think that is a very fair request.

Hon. Mr. MCLENNAN: I think so too.

WITNESS: Now take the people, my friends from the Interior. The fishery Inspector says, these streams are streams where the fish hatch and you must not take any fish. We are in sympathy with the people of the interior or anyone else in British Columbia. Their forefathers took fish from these very streams before the white man came. Because of their taking the fish from the lakes and streams, it never resulted in the extermination of the fish. There were so many fish in those streams before the white man came that you could almost walk across the stream on the fish.

Hon. Mr. STEVENS: Yes, I have seen that.

WITNESS: Yes, I have no doubt you have. Because there is an effort now being made to rehabilitate the fish in these streams—the government should not do that—at the expense of the Indian being debarred of fish for his food.

By Hon. Mr. Stevens:

Q. Would your people be satisfied with the right to fish as you are indicating? To the degree necessary for them to smoke for their winter use and their use as they go along.—A. Yes, sir.

Q. For family use?—A. Yes sir, family use in British Columbia.

By Hon. Mr. Bennett:

Q. You know how difficult that is, Mr. Paull. I can see that you know much more about it than we do, and you can see how difficult that would be?—A. It would be very difficult, if you leave the fishing regulations as they are now, practically at the discretion of the Deputy Minister or the Fishery Inspector. But if the Parliament of Canada defined it in some way so that we could understand it, and not be left entirely to the discretion of the local officer, then I think the problem would be solved.

Q. Mr. Paull, if there is no supervision locally with respect to the matter, you would be the first man to admit that it would result in great abuses?—A. Yes.

Q. If you pass a statute as you suggest, to give a certain thing, the result would be an abuse of it in a very limited time, whether it be by a white man or an Indian?—A. There is a statute already in the Statute Books of Canada, but it provides for local supervision.

Q. Whether it is the Dominion Fisheries Act or not, I know there is local supervision?—A. We would welcome all the supervision necessary.

By Hon. Mr. Stevens:

Q. How would you suggest that we could control your people from abusing that privilege, if it were given to them? Have you any suggestion to make about that?—A. The Indian has been taught not to destroy anything that he uses for food, but to use all of that that is necessary for his food.

Q. He used to destroy a lot of it though. You know how they used to do in their hunting, for instance; set out a string of fires in the bush, so that the deer would be driven along certain lines. I have seen that done myself. I do not think they would do that now because they have been restricted?—A. Perhaps that happens when they have no guns.

Q. I recall some very bad fires twenty or thirty years ago.—A. I am not in a position to dispute that.

Q. On the fishing question, give us a suggestion how we can control that.—A. Well, if you will allow the Indian to take fish for food where and whenever he requires it. You would have to repeal or amend some of the existing laws. In the Indian Act there is a law giving the Superintendent General of Indian Affairs power to supervise the fishing on the Indian reserves, and in streams flowing through or by or adjacent to an Indian reserve. Now that law exists in the Indian Act. On the other hand, the Fisheries Department has an Act now in existence that they have supervision over all fishing.

Q. That is in the province?—A. No, it is a Dominion statute.

Q. Is not that fishery control exercised by the province?—A. In inland waters it is, but in tidal waters it is by the Dominion.

Q. I mean, in inland waters; up stream.—A. I think the Indian pretty nearly has to steal the fish to take for his food in inland waters. What I mean by that is that he is automatically a criminal for taking fish for food under the provincial law. But suppose the provincial law deprives the Indian from taking fish in the inland waters, this Parliament and this committee, in order to bring about the requirements of the Indian, would have to approach the government and get them to alter their laws.

Q. You are not restricted very much on the coast regarding the troll fishing, like the white men who fish around Vancouver. You are not restricted there.—A. Well, they can troll all right, but as you know, trolling is principally for sport.

Q. Oh, no; what about all those fishermen on Dead Men's Island? You know those people who come in at the Hynes Wharf, all those white fishermen? —A. They troll in some cases in Howe Sound and Burrard Inlet, for spring salmon, during July and the latter part of June, and then they go up the coast to fish for codfish.

Q. They fish the year round?—A. Yes, but they have big boats, and the necessary equipment for procuring these fishes, that the Indian has not got.

Q. Oh, no, the Indian can get equipment as well as they can. They are mostly poor men; poorer, most of them, than the Indians are.—A. They belong to a co-operative company; they advance them the money to equip themselves.

Q. But they are not restricted by law?—A. To procure fish they are, but not in the matter of trolling.

Q. You want the privilege of gill net fishing at any time?—A. We should be allowed to gill net for food.

Q. I am afraid you would find it very difficult to control that.—A. What I mean by that is a short net, not a gill net of 150 fathoms or 300 fathoms, but a small net, say the length of this room, to put in adjacent to the mouth of the streams. Not to put across the streams near Vancouver; a little net, say 150 feet long, big enough to put in a canoe, about one fathom in depth. We should be allowed to gaff fish if we want them, fresh fish, if we have not a net, in Capilano Creek.

Q. To spear them?—A. Yes, spear them.

Q. At night?—A. No, in the daytime. Capilano has been closed by the Fisheries Department. We cannot fish there. We cannot gaff them as we have done, although that stream passes through an Indian Reserve. It appears that the authority of the fishing inspector supersedes the authority of the Superintendent General to look after fishing in streams which pass through the Indian Reserves. One of my Indians was prosecuted there last year for gaffing dog salmon. Now the sort of salmon that the Indians use is not the sock-eye salmon, which is greatly used for commercial purposes; it is a cheap kind of salmon, that they do not can very much of, and not sock-eye, but dog salmon, Cohoes salmon, and other cheap varieties.

By Hon. Mr. Bennett:

Q. Who carries on that authority?—A. The Fisheries Department of Canada through their local officer. Mr. Perry and myself defended an Indian and we won out in the Police Court. They appealed the case and it was heard before Judge Cayley. I think he gave a sort of fifty-fifty decision, but the Fisheries Department said the decision was in their favour.

Hon. Mr. STEVENS: Well, that ought to be about right, a fifty-fifty decision.

The CHAIRMAN: Now, Mr. Paull, it is just one o'clock. Probably you had better stop there. Have you more evidence that you want to give?

The WITNESS: Yes, Mr. Chairman, I have. I have just got beyond Confederation in my narrative. I want to get to the McKenna agreement at some time.

Hon. Mr. BENNETT: I congratulate you very sincerely, Mr. Paull, on your statement.

Hon. Mr. MCLENNAN: Mr. Chairman, I would suggest that upon this point there might be a Conference between the Indian Department and our fishery people.

Hon. Mr. BENNETT: Mr. Scott said Mr. Found would like to be heard.

Dr. SCOTT: Mr. Found would like to be heard on the question later on.

Discussion followed

The Committee adjourned.

EXHIBIT No. 1

(Filed by A. E. O'Meara)

THE ALLIED INDIAN TRIBES OF BRITISH COLUMBIA

Memorandum Regarding General Counsel

We, Peter R. Kelly Chairman of the Executive Committee of the allied Indian Tribes of British Columbia and James A. Teit, special agent of the allied Tribes, hereby certify as follows:

1. In the month of May 1916, Mr. Arthur E. O'Meara, Barrister, who had previously acted as Counsel for the Nishga Tribe in an honourary capacity, agreed to take full professional responsibility for the Petition of that Tribe and to represent that Tribe before His Majesty's Privy Council, the Parliament of Canada, the Governments and all others concerned. The Delegates of the Nishga Tribe then in Ottawa by letter addressed to the Minister of Interior informed the Government of Canada of the arrangement so made.

2. An alliance of Tribes having been subsequently formed, upon occasion of meeting of the Executive Committee of the allied Tribes held at Vancouver in the month of February 1919 it was arranged between the allied Tribes and Mr. O'Meara that he should act as General Counsel having charge of the British Columbia Indian case, in whatever way it might be carried through to final adjustment of all matters.

3. A larger alliance of Tribes having been formed in the present month, upon occasion of meeting of the Executive Committee of that alliance this day held it was arranged that Mr. O'Meara should continue to act as General Counsel having charge of the Indian case and Mr. O'Meara was duly appointed to be General Counsel of the newly formed alliance of Tribes.

4. In particular Mr. O'Meara has been fully authorized as such General Counsel to present to and discuss with the Government of Canada all matters contained in and arising from the Statement which in the year 1919 the allied Tribes prepared for the Government of British Columbia, the matter of the laws enacted by the Parliament of Canada in the year 1920 known as Bill 13 and Bill 14, and the matter of all funds expended and all funds which will require to be expended by the allied Tribes in connection with the British Columbia Indian case now before His Majesty's Privy Council and in securing determination of all questions related thereto and final adjustment of all differences between the two Governments and the allied Tribes.

PETER R. KELLY,
Chairman of Executive Committee.

J. A. TEIT,
Special Agent.

VANCOUVER, B.C.,
20th January, 1922.

I Andrew Paull, Recording and Corresponding Secretary of the newly formed Alliance of Indian Tribes of British Columbia, hereby certify that paragraphs 3 and 4 of the above memorandum are correct in every particular.

ANDREW PAULL,
Recording and Corresponding Secretary.

EXHIBIT No. 2

(Filed by A. E. O'Meara)

ALLIED INDIAN TRIBES OF BRITISH COLUMBIA

ANDREW PAULL,
Secretary Executive Committee,
North Vancouver, B.C.

Rev. P. R. KELLY,
Chairman Executive Committee,
763 Albert St., Nanaimo, B.C.

VANCOUVER, B.C., 2nd December, 1926.

DEAR FRIENDS: In order that at the present time we may report to you as clearly and briefly as possible we first ask that you again read the chief contents of the circular letter sent out on 31st December last.

The Petition which had then been decided upon was presented to Parliament in the month of June last and contains a full and strong statement of the case of the Indian Tribes of this Province. The great importance of the Petition having been recognized in both Houses of Parliament, it was printed in full in the official reports of proceedings in Parliament known as Hansards, copies of which were sent from Ottawa to all members of the Executive Committee and to others.

All possible was done for securing that the Petition should be seriously debated in Parliament and that the desired action of helping forward the case in His Majesty's Privy Council should be taken. The accomplishing of this result, of which there seemed to be good prospect, was made quite impossible by the political upheaval that occurred and the dissolution of Parliament that followed.

In the month of July the case was brought before the Government of Right Hon. Arthur Meighen. Important and encouraging interviews were had with members of that Government. The Hon. R. B. Bennett of Calgary, then acting Minister of Interior, gave to your Chairman and General Counsel assurances that the Government if sustained in power would take early action in accordance with Mr. Meighen's statement made in the House of Commons on 26th June, 1925, declaring that the Indian Tribes of British Columbia are entitled to obtain from His Majesty's Privy Council decision of the Indian Land controversy.

The Executive Committee of Allied Tribes upon occasion of meeting held in October after full explanation unanimously adopted resolution approving all contents of the Petition presented to Parliament and all other action taken by the Chairman and General Counsel at Ottawa.

In pursuance of another resolution adopted by the Executive Committee the Chairman addressed to the Minister of Interior letter expressing the hope that the present Government of Canada will recognize that all assurances on the subject of the Indian Land controversy which have been given by previous governments are binding upon the Dominion of Canada and should now be fulfilled, and to that end will help forward early action of the House of Commons referring the Petition to a Special Committee as requested by the Allied Tribes.

Upon occasion of the same meeting of the Executive Committee the General Counsel advised that as rapidly as possible the case should be carried through Parliament and carried forward in His Majesty's Privy Council.

The Committee decided that for securing funds sufficient for taking full advantage of the very strong position reached by means of the Petition now before Parliament and if possible carrying forward the case and the whole work of the Allied Tribes to early and complete success a campaign should be carried on throughout the Province during the month of December.

The present position of the Indian case at Ottawa is that the Petition has brought before Parliament the Indian case as brought before His Majesty's Privy Council and therefore manifestly requires to be dealt with along sound judicial lines.

There is good reason for expecting that on early day of the Session leading members of the House of Commons will press for the taking of action upon the Petition of Allied Tribes.

If, as a result, the House of Commons shall appoint a Special Committee, the first business of such Committee will be consideration of the matters which are subject of discussion which was entered upon by the General Counsel with the Minister of Justice, namely, the fiat which was promised by the Minister of Interior in the House of Commons and common ground which might be reached by the Government of Canada and the Allied Tribes in connection with the carrying forward of their independent judicial proceedings. The Special Committee will also consider the closely related matter of the first three prayers of the Petition asking for, (1) Safe-guarding of the aboriginal rights of the Indian Tribes of British Columbia, (2) Defining of the issues between the Allied Tribes and the two Governments which require to be judicially decided and, (3) Helping forward the independent judicial proceedings of the Allied Tribes.

After these matters shall have been discussed we shall be in a position to decide whether it has become necessary for the Chairman or other representative of the Allied Tribes to go to Ottawa. The Allied Tribes are advised that the sending of a larger delegation would be rendered necessary only by some quite new developments which might occur in Parliament not now thought to be probable.

We trust all the Indians of the Province will clearly understand that there are not two separate objectives of the Allied Tribes, Parliament and the Privy Council, but there is one objective, that of carrying the case right through to a hearing before the Judicial Committee of His Majesty's Privy Council. Also we trust it will be clearly understood that all work done and to be done at Ottawa is intended for accomplishing safely and rapidly this one great purpose by reaching a complete understanding with Parliament and if possible securing the powerful help of Parliament.

It is necessary to bear in mind that the Allied Indian Tribes of British Columbia is the only organization officially recognized by the Government of Canada. Any statement coming from other sources may be regarded as unreliable and should be ignored. The Executive Committee will promptly inform you of all important events.

For practically carrying out the decisions of the Committee above stated it is most important that commencing during the first week of December every tribe should carry out a well organized plan for securing larger funds than have ever before been raised. To accomplish this end in a systematic way the Committee advises that every member of the tribe of eighten years of age should provide at least three dollars and in the case of tribes that did not provide funds last Spring at least five dollars. The Committee earnestly hopes that those able to provide larger funds will do so. It is strongly advised by the Committee that this work of securing funds be completed before end of December or in cases in which the letter shall be delayed at the earliest possible date of January.

If every tribe will do its share in meeting this responsibility the common goal of all the tribes will be reached.

All funds to be secured as result of this campaign should be sent to the Treasurer, Rev. P. R. Kelly, 763 Albert Street, Nanaimo, B.C.

With every good wish for a Merry Christmas and a Happy New Year.

Yours faithfully,

P. R. KELLY,
Chairman and Treasurer.

ANDREW PAULL,
Secretary.

COMMITTEE ROOM 368,

HOUSE OF COMMONS,

MONDAY, April 4th, 1927.

The Special Joint Committee appointed to inquire into the claims of the Allied Indian Tribes of British Columbia, as set forth in their petition submitted to Parliament in June, 1926, met at 10.00 o'clock, Hon. Hewitt Bostock presiding.

The CHAIRMAN: Gentlemen, it is past our time for beginning, and we shall commence our morning sitting. Mr. Paull, have you any further evidence to bring before the committee?

Mr. PAULL: Yes, sir. Shall I proceed, Mr. Chairman?

The CHAIRMAN: Yes.

ANDREW PAULL recalled.

The WITNESS: At the last session of this committee, Mr. Chairman and hon. gentlemen, I was about to read a memorandum issued by the Hon. David Laird in 1874 dealing with Article 13 of the Terms of Union.

By the Chairman:

Q. Do you think it is necessary to take up the time of the committee reading that?—A. Yes, Mr. Chairman. The Province of British Columbia depends upon Article 13. Dr. Scott has mentioned some material facts in connection with Article 13 and this memorandum of the Honourable the late David Laird coincides with our opinion of this whole matter in connection with Article 13.

Q. The committee already have that before them in the statement which Doctor Scott placed in the record.—A. I am sorry to say that Doctor Scott did not include this in his remarks, and that is why I want to include it. (Reading):

> "When the framers of the Terms of Admission of British Columbia into the Union inserted this provision, requiring the Dominion government to pursue a policy as liberal towards the Indians as that hitherto pursued by the British Columbia government, they could hardly have been aware of the marked contrast between the Indian policies which had, up to that time, prevailed in Canada and British Columbia respectively.
>
> Whereas, in British Columbia, ten acres of land was the maximum allowance for a family of five persons, in all Canada the minimum allowance for such a family was eighty acres: and a similar contrast obtained in regard to grants for education and all other matters connected with the Indians under the respective governments. Read by this light, the insertion of a clause guaranteeing the aborigines of British Columbia the continuance by the Dominion government of the liberal policy heretofore pursued by the local government, seems little short of a mockery of their claims.
>
> The first step taken by the government of the Dominion of Canada in dealing with this subject, was the passing of an Order in Council of the 21st March, 1873, recommending that eighty acres of land should be

assigned by the local government of British Columbia to every Indian family of five persons.

To this recommendation (Made in accordance with the general policy heretofore pursued in old Canada in such matters, but without taking into consideration the bearing of the 13th clause already referred to, securing a liberal policy to the Indians of British Columbia), the government of that province peremptorily declined to accede, alleging that the quantity of land which the Order in Council proposed to assign to the Indians was greatly in excess of what was found to be sufficient by previous local governments, and the Indian Commissioner was notified that the government of British Columbia had decided that the land reserved for the Indians should not exceed twenty acres for each head of a family of five persons.

Even this allowance of twenty acres for each head of a family, inadequate as it would have been considered by the Indians, has, by the interpretation lately put by the local authorities in their Order in Council granting it, been very materially reduced. They now hold that that Order in Council was intended to apply to new reserves only, and not to the old reserves existing at the time of Union. Such, with the exception of the latter interpretation, was the position of the Indian land question in British Columbia when the duty of administering Indian affairs devolved upon the undersigned in his capacity of Minister of the Interior.

His first step in connection with the subject was to submit a memorandum to Council setting forth the facts of the case and recommending, as under the circumstances was inevitable, that the Order in Council of the 21st March, 1873, assigning eighty acres to each Indian family, be rescinded, and that only twenty acres be allowed to each family, but also recommending, inter alia, that the local government should be invited to reconsider their Indian land policy with a view to co-operate in every way with the government of the Dominion in satisfying the reasonable demands of the native tribes west of the Rocky Mountains.

This memorandum was approved by the Governor General in Council on the 24th April last.

Mr. Indian Commissioner Powell duly submitted this Order in Council to the British Columbia government accompanied by such arguments as he could use in favour of the adoption by that government of a more liberal land policy toward the Indians.

The British Columbia government, however, appear to be reserved to adhere to their determination not to go beyond the grant of twenty acres to each Indian family, and even that allowance, as already observed, is authoritively declared to be intended not " to affect or unsettle reservations before established, but is confined to the cases in which, at the time of Confederation, the original tribes were not provided with the land set apart for their exclusive use."

The Indian Commissioner, on being officially notified of the views of the local government, felt reluctantly obliged to arrest the surveys of the Indian reserves in the province—surveys which had been authorized by him, and which were then being proceeded with, on the understanding (sanctioned, as he believed, by the local government) that twenty acres of land were to be allowed to each Indian family, whether on the old Reserves or otherwise.

This suspension of the surveys, though under other circumstances a necessary step, is calculated to aggravate the discontent and alarm of the Indians in reference to their treatment by the government, and will, in a great measure, help to keep open the long-pending dispute between the

white settlers and the Indians in reference to their respective land claims; disputes which, in the summer of 1873, nearly led to an outbreak of the Indian population of the province, and to the recurrence of which it was hoped these surveys would put an end.

How universal, deep-seated, and intense, the feeling of discontent among the Indians of British Columbia was, previous even to the last decision of the Local Government, limiting the twenty acre grant, is unmistakably apparent in Mr. Commissioner Powell's report of his visit to the native tribes last summer, and in the letters of the Roman Catholic Bishop of the province, and Father Grandidier.

In this connection Mr. Commissioner Powell does not hesitate to write that—

If there has not been an Indian war, it is not because there has been no injustice to the Indians, but because the Indians have not been sufficiently united.

These gloomy anticipations are shared, not only by both the Indian Commissioners, but also by the white settlers generally in the province, and are expressed still more strongly, if possible, in the communication already alluded to, of Father Grandidier, and the Roman Catholic Bishop of the province.

All concur in the opinion that, until the land grievances of which the Indians complain are satisfactorily redressed, no statement, however liberal or humane in the way of money grants or presents, will avail to secure peace or contentment among them. As an evidence of the strength of this feeling of dissatisfaction, Commissioner Powell states that the Indian bands at Nicola and Okananan Lakes, wholly declined to accept any presents from him last summer, lest by so doing they should be thought to waive their claim for compensation for the injustice done them in relation to the Land Grants.

The views of the Roman Catholic Bishop, and of Father Grandidier entirely accord, as we have said, with those of the Commissioners; and the opinions of those Reverend gentlemen are, it is thought, worthy of special consideration from the fact that they speak with a thorough knowledge of the subject, acquired by long residence among the Indians, and close and habitual intercourse with them.

The other principal land grievances, of which the Indians complain, besides that of the insufficient quantity allowed them, as already referred to, may be briefly stated under two heads:—

1st. They complain that, in many instances, the lands which they had settled upon and cultivated, have been taken from them without compensation, and pre-empted by the white settlers, and that in some cases, their burial grounds have been thus pre-empted.

2nd. They complain that, in consequence of the present state of the law in reference to pastoral land, their cattle and horses are systematically driven away from the open country by the white settlers, who have taken leases of pastoral land in the neighbourhood.

All these several grievances have been, for many years past, the subjects of complaint among the Indians. But, during the last two or three years, they have assumed a more serious aspect than heretofore; partly from the fact that the Indians are now, for the first time, feeling practically the inconvenience of being hemmed in by the white settlers, and prevented from using the land for pastoral purposes; partly because the Indians are only now becoming to understand the value of agriculture, and to desire the possession of land for cultivation; and partly, it may be, because they have been recently made aware of the liberal land policy

extended to the Indians of the Northwest in recent Treaties, and naturally contrast this treatment with the policy meted out to themselves.

The Indians of British Columbia, especially those in the interior of the Province, are intelligent and industrious, and likely to turn to good account any farming lands which may be assigned to them. Moreover, they already own large herds of horses and cattle, and a liberal allowance of pastoral land is to them a matter of absolute necessity, to enable them to support their stock.

The undersigned feels that the Government of the Dominion cannot be charged with want of liberality, in its dealings with the Indians of British Columbia, since the admission of that Province into the Union. During the last two years, the sum of $54,000 has been voted by Parliament for their benefit; and before the expiration of the current financial year, the whole of that large sum will probably have been expended, either in supporting Indian schools, making surveys, distributing agricultural implements and seed, or for other objects calculated to promote their material and moral well-being.

When it is stated that prior to the admission of British Columbia into the Union, the entire annual expenditure of the local Government on the Indians, did not exceed, at most, a few hundred dollars; that as Mr. Commissioner Powell states:—

> Money payments by the Government, on account of the native race, have been restricted to expenditure incurred by Indian outrages, and no efforts have been put forth with a view to civilizing them; it having been considered that the best mode of treating them was to let them alone."

Hon. Mr. STEWART: Mr. Paull, I do not want to stop you, but really this has been the subject of an inquiry. I want to say to the Chairman that the House of Commons begins sittings to-morrow morning at eleven o'clock. There are a number of witnesses the Committee would like to hear, and I would ask you to condense; if you are going to read long articles of this sort, you will bar others who are anxious to appear before the Committee, altogether.

Mr. MCPHERSON: Why is it not sufficient to give us the references to what you wish read.

Hon. Mr. STEWART: Could you not have that filed?

WITNESS: It would not be fair, Mr. Chairman, since Dr. Scott has read a document upon this question.

Hon. Mr. STEWART: You can file anything you want to, without taking up time reading long extracts. It would serve your purpose as well, as we will have them printed for the benefit of the Committee.

By Hon. Mr. Stevens:

Q. Are you through with that extract?—A. It is nearly finished.

Hon. Mr. STEVENS: He has just about a paragraph to read; why not let him finish it?

Hon. Mr. STEWART: Very well.

WITNESS: I have less than half a page yet to read.

The CHAIRMAN: Finish it then.

WITNESS: (*Reading*):

> "It cannot be alleged that, in this respect, the Government of the Dominion has failed, on its part, to continue towards the Indians of that Province a policy as liberal as that previously pursued by the British Columbia Government.

In laying the foundation of an Indian policy in that Province, on the same permanent and satisfactory basis as in the other portions of the Dominion, the Government of the Dominion feel they would not be justified in limiting their efforts to what, under the strict letter of the Terms of Union, they were called upon to do. They feel that a great national question like this, a question involving possibly in the near future an Indian War with all its horrors, should be approached in a very different spirit, and dealt with upon other and higher grounds. Actuated by these feelings, the Government of the Dominion in the dealings with the Indians of British Columbia, has acted as has been shown, in a spirit of liberality far beyond what the strict terms of the agreement required at its hands; and they confidently trust that on a calm review of the whole subject in all its important bearings, the Government of that Province will be prepared to meet them in a spirit of equal liberality.

The policy foreshadowed in the provisions of the 13th Clause of the British Columbia Terms of Union, is plainly altogether inadequate to satisfy the fair and reasonable demands of the Indians.

To satisfy these demands, and to secure the good-will of the natives, the Dominion and Local Governments must look beyond the terms of that agreement, and be governed in their conduct towards the aborigines by the justice of their claims, and by the necessities of the case.

The undersigned would, therefore, respectfully recommend, that the Government of the Dominion should make an earnest appeal to the Government of British Columbia, if they value the peace and prosperity of their Province—if they desire that Canada as a whole should retain the high character she has earned for herself by her just and honourable treatment of the red men of the forest, to reconsider in a spirit of wisdom and patriotism the land grievances of which the Indians of that Province complain, apparently with good reason, and take such measures as may be necessary promptly and effectually to redress them.

In conclusion, the undersigned would recommend that, should the views submitted in this Memorandum be approved by the Governor General in Council, a copy of the Order in Council passed in the case, with a copy of this Memorandum, be transmitted to His Honour the Lieutenant-Governor of British Columbia, with a request that he would take an early opportunity of submitting them to his Executive Government, and express the hope that the views of the Dominion Government therein embodied, may obtain an early and favourable consideration.

He would further recommend, that copies of the Order in Council and the Memorandum, should also be transmitted by the Governor General to the Secretary of State for the Colonies, accompanied by copies of such of the other documents herewith submitted as may be thought necessary to enable the Colonial Secretary to understand in all its bearings the great national question now seeking solution at the hands of the Dominion Government and the Government of British Columbia."

(Signed) DAVID LAIRD,
Minister of Interior.

Hon. Mr. MURPHY: What is the title of the volume from which you have been reading?—A. The Journals and Sessional Papers of British Columbia of 1876.

Q. And what is the date of the recommendation to Council?—A. The recommendation to Council is the 4th of November, 1874.

By Hon. Mr. Stevens:

Q. What is the point you want to make in regard to that report?—A. The points I want to make are these: The 13th Article was inadequate to satisfy the requirements of the Indians insofar as the obligation to establish Indian reserves were concerned.

Hon. Mr. STEVENS: I think with the Chairman's permission, I would draw the attention of the Committee, and of Mr. Paull and his associates, to the following facts; I think I have them collected accurately, but the Deputy Superintendent General will correct me if my figures are not approximately correct.

The complaint at this time was that twenty acres per family was altogether inadequate. Now, the acreage to-day is 756,000 acres of Indian reserves, allocated to Indian use. Roughly, that amounts to 132 acres to a family of four, taking four as a normal family, which I think perhaps would be reasonable.

Hon. Mr. MURPHY: And what is the total population?

Hon. Mr. STEVENS: I have taken it as 23,000. Now, that means, that instead of a grievance based upon an allotment of 20 acres, you have a situation where there are 132 acres per family. It was pointed out that there was an inadequate expenditure of public money in the interests of the Indians. At that time I think there were 50,000 or 60,000 Indians, something like that, and the figure mentioned is $50,000, in that memorandum. Last year I think we spent $600,000 for 23,000 Indians as against, at the time of this grievance, $50,000 for some 50,000 Indians. I merely draw attention to the changed situation. Apparently the chief grievances set out in that memorandum have been well taken care of by the action of both Governments.

Hon. Mr. MURPHY: Does Dr. Scott say that the Hon. Mr. Stevens' summary is a correct one?

Dr. SCOTT: Yes, it is correct. I might point out to the Committee that on page 46 of the proceedings of March 30th you will find the printed Order in Council which put into operation the selection of reserves. That was a preliminary memorandum to the Council that was drafted by the Hon. David Laird. You will notice that this is signed by the Hon. R. W. Scott, Acting Minister of the Interior. I think that Mr. Laird had gone west, at least he was not on duty then. I thought that there would be no purpose in burdening the record with the first Order in Council, because that is the operative Order in Council on which the Commission set out the reserves.

Hon. Mr. MURPHY: It superseded what went before?

Dr. SCOTT: Yes.

Hon. Mr. MCLENNAN: The one that has just been read was preparatory to the one that is in the Minutes?

Dr. SCOTT: Yes, it was a preparatory Order.

Mr. PAULL: My purpose in reading the Hon. David Laird's memorandum was to show to this Committee the conditions that obtained. I would just like to answer the statement that was read by the Hon. Mr. Stevens, as to the area of reserves. It is true, perhaps, that the area of reserves now allocated to the Indians is in excess of what they were in the past but that condition was brought about in an arbitrary way by both governments. To illustrate that; the 1912 Commission took away from the Indians 47,058 acres, cut it out from their reserves. The value of that 47,000 acres is $1,522,704. When the Commission, under their powers, cut off that area from the existing reserves, they allocated to the Indians an acreage far in excess of what they took away. Probably, that is why that statement is brought about. The new reserves comprise an area of 87,292 acres, valued at $444,853. Now, that shows that the Commission took

away good land from the Indians and gave them bad land. I can mention a few cases from my knowledge, but I would not take the time of this Committee.

Hon. Mr. STEWART: That is very important evidence for this Committee, and if you will just confine yourself to things of that character we will get somewhere. When you make the statement that there were 44,000 acres of land sold, which was valuable land, and you got in lieu of that more acreage of less value, then that is important for us. I merely mention that so that you will confine yourself to evidence of that kind; it is very important to the Committee.

Dr. SCOTT: I want to point out to the Committee that the Indians will get 50 per cent of the value of these lands when they are sold.

Hon. Mr. MCLENNAN: That was carried out?

Dr. SCOTT: It will be carried out.

Mr. PAULL: I would like to point out the possibilities of that regulation. The Provincial Government can sell any of this cut-off land to friends of theirs for a dollar, and the Indians will get 50 cents of that. There is no provision protecting the Indians at all.

Hon. Mr. MCLENNAN: Have you information of any case where that has happened, Mr. Paull?

Mr. PAULL: No, but there is no provision protecting us. I have no vote and I am not criticising anybody's policy. I am glad that Mr. Stewart pointed that out to me, and in that connection I think I had better deal with the McKenna-McBride agreement. The agreement is that this shall be a final settlement. Now, we have always contended that conditions would be brought about just as the agreement says.

Hon. Mr. STEWART: It would be better for you to say that it is contended it was a final settlement of the reserve lands.

Mr. PAULL: No, I cannot say that, Mr. Stewart.

Hon. Mr. STEWART: There is no final settlement by the Federal Government for such other matters as educational matters, and otherwise?

Mr. PAULL: The Deputy Minister of Justice gave an opinion that it was a final settlement.

Hon. Mr. STEWART: So far as lands for the reserves were concerned?

Mr. PAULL: All matters in British Columbia.

Hon. Mr. STEVENS: What is your objection to that? Let us know why you object to that term being used?

Mr. PAULL: Because, by the actions of the Dominion and Provincial Governments, they have put to an end one of the provisions of the British North America Act; that is, article 13.

Hon. Mr. STEVENS: That is not what I mean. Do you claim that this final settlement has injured you or injured your people?

Mr. PAULL: Because they have not dealt with other matters that are of more concern to the Indians, such as foreshores, hunting, water-rights, and so forth.

Hon. Mr. STEVENS: I think it is generally recognized that this does not deal with foreshores, water-rights and fisheries?

Mr. PAULL: The agreement says that this shall be the final settlement of all matters pertaining to Indian Affairs, yet they do not touch upon matters that concern us.

Dr. SCOTT: It is only contended that it is a final settlement as between the Dominion and the Province.

Hon. Mr. STEWART: The point I want to make, Mr. Paull, is that there is no final settlement of definite amounts, either per capita or otherwise, for Indians from the Federal Government; that may be raised from time to time.

Mr. PAULL: Do I understand you, then, even after the passing of the adoption of the report of this Commission, that the Dominion Government could go to the Provincial Government and operate the conditions of Article 13; that is, secure from the Province additional lands?

Hon. Mr. STEWART: When you confine it to the land question, I say yes. I want to make it clear that it is not final, so far as the responsibility of the Federal Government to the Indians is concerned. On the land question, yes.

Mr. PAULL: But the trouble is this; that the Indians require other things that are only held by the Province and not by the Dominion.

Hon. Mr. STEWART: That is all right; go on with that.

Mr. PAULL: How can the Dominion procure from the Provincial Government things that we will require in the future when the Dominion and the Province has agreed that this is final?

Hon. Mr. STEWART: So far as lands are concerned.

Mr. PAULL: Not only lands, but everything.

Hon. Mr. STEWART: You are right in that respect. The Province of British Columbia say, "We are through now, there is nothing more we are going to do."

Hon. Mr. STEVENS: Tell us what your claim is; let us get some idea of what you want; fisheries, hunting, foreshores, and so on. Set them all out so that this Committee can have some idea of what your claims are.

Mr. PAULL: The claims that are not being dealt with by this Commission, as I said; foreshores. Perhaps I might condense my statement if I read a statement prepared and presented by James Teit, a white man who was associated with the Indians of British Columbia.

Hon. Mr. STEVENS: What is the date of that?

Mr. PAULL: 25th of July, 1920.

Hon. Mr. STEVENS: Presented to whom?

Mr. PAULL: Presented to the Banking and Commerce Committee of the Senate in the year 1920.

The CHAIRMAN: That includes all the claims you are now making?

Mr. PAULL: That includes our objection to this Commission of 1912. Shall I read the material parts of this?

Hon. Mr. MCLENNAN: Would it not save time to have it handed in?

Mr. PAULL: I would willingly do that.

Hon. Mr. STEVENS: Summarize it briefly.

Mr. O'MEARA: It is very short.

Mr. PAULL: The Indians claim all foreshores fronting on Indian reserves. Is that what the Committee wants?

Hon. Mr. MCLENNAN: Yes, that is exactly what we want.

Mr. PAULL: That statement is briefly just what I am about to say. It is a carefully prepared statement.

Hon. Mr. MURPHY: Could you not put it in this way? The Indians claim all foreshore in front of Indian reserves; the reasons for that claim are to be found in this statement at pages so and so.

Hon. Mr. STEVENS: On pages 30, 31 and 32.

Statement of James Teit filed as follows:—

I want to read a statement here which was prepared by our late friend, Mr. J. A. Teit, in the spring of 1920, in Ottawa, to be presented to

the Senate, but it was never delivered. The document has been preserved. I would like to just read parts of that. This applies to conditions which existed at that time, and refers to the conditions which exist now. "The Indians see nothing of real value for them in the work of the Royal Commission. Their crying needs have not been met. The Commissioners did not fix up their hunting rights, fishing rights, water rights, and land rights, nor did they deal with the matter of reserves in a satisfactory manner. Their dealing with reserves has been a kind of manipulation to suit the whites and not the Indians. All they have done is to recommend that about 47,000 acres of generally speaking good lands be taken from the Indians, and about 80,000 acres of generally speaking poor lands, be given in their place. A lot of the land recommended to be taken from the reserves has been coveted by whites for a number of years. Most of the 80,000 acres additional lands is to be provided by the Province, but it seems the Indians are really paying for these lands. Fifty per cent of the value of the 47,000 acres to be taken from the Indians is to go to the Province, and it seems this amount will come to more than the value of the land the Province is to give the Indians. The Province loses nothing, the Dominion loses nothing, and the Indians are the losers. They get fifty per cent and lose fifty per cent on the 47,000 acres, but, as the 47,000 acres is much more valuable land than the 80,000 they are actually losers by the work of the Commission."

Now, this was the opinion arrived at by our late friend, and we attach a great deal of importance to statements that he prepared carefully. It is not a statement prepared by our general counsel, but by one who went carefully into the matter, and who strived to interpret the whole thing as he saw it, and that was his conclusion. Perhaps it is educational to read some more from this same document. There is another reference to Bill 13, and I will read that. It will speak for itself, and I think it expresses the Indians' viewpoint very accurately.

"Bill 13 is to empower the Government of Canada to adopt the findings of Royal Commission as a final adjustment of all lands to be reserved for the Indians. The McKenna-McBride Agreement, the Order in Council, the findings of the Royal Commission, and Bill 13, are all parts of a whole. The Order in Council states that the Indians shall accept the findings of the Royal Commission as approved by the Governments of the Dominion and the Province as a full allotment of reserve lands, and further, that the Province, by granting said reserves as approved, shall be held to have satisfied all claims of the Indians against the Province. What chance will there be for the Indians in the future to get additional lands or a fair adjustment of all their rights, if Bill 13 is made law?" I simply read from the document. Mr. Scott has said Bill 13 is merely an enabling Act, giving the Government power to deal with British Columbia, and that the whole bargain is so advantageous to the Indians, that the Indian Department feels justified in backing it up. We are sorry the Indian Department is of this opinion, for it places it out of sympathy with us, and makes it appear to the Indians an instrument of oppression and injustice.

The chief enabling the Indians see in the Bill is that of enabling the Government to take their lands without their consent. There may be something advantageous to the Government in the Bill, but certainly not to the Indians.

Mr. PAULL: The reason the Indians claim foreshores on reserves in tidal waters is because the foreshore is just as necessary to the Indians as the reservation is. Up to about the year 1920 whenever foreshores fronting on

Indian reserves were required for public purposes, the consent of the Indians was always secured. The Vancouver Harbour Commissioners were given a quit-claim deed in the year 1918, and the consent of the Superintendent General of Indian Affairs was first secured before that quit-claim deed was granted to the Vancouver Harbour Commissioners. We also claim ownership of foreshores, or water lots, fronting on reserves in the Interior, on non-tidal waters.

Hon. Mr. McLennan: Just say that again, what is it you claim on the inland waters?

Mr. Paull: Foreshores and water lots fronting on Indian reserves in the interior.

Hon. Mr. Stevens: Riparian rights?

Mr. Paull: No, beyond riparian rights. Absolute beneficial ownership of the foreshores.

Hon. Mr. Barnard: What is the foreshore in non-tidal waters?

Mr. Paull: On lakes and rivers.

Hon. Mr. Stevens: You mean between high and low waters?

Hon. Mr. McLennan: He means water lots, I take it.

Hon. Mr. Barnard: He said it was not that. He said he wants more than riparian rights, and I want to know what they mean.

Mr. Paull: Riparian rights mean that the Indian would only have the right of access.

Hon. Mr. Barnard: What do you want?

Mr. Paull: We want to have all the rights beyond that.

Hon. Mr. Barnard: Do you want the land under the water?

Mr. Paull: No. We want to be allowed, I suppose, to establish whatever we want on the foreshores of the reserve. If we did not have that right there would be nothing to prevent anyone from establishing some industry or nuisance fronting on the Indian Reserve.

Hon. Mr. Barnard: I do not want to get into an argument with you, but if the Indians have the land down to the water's edge, where there is no rise and fall of tide, how can anyone establish anything in front of it?

Mr. Paull: Perhaps somebody is liable to come in there and put something there that the Indians object to.

Hon. Mr. Barnard: They cannot do it without being trespassers on the reserve.

Mr. Paull: Perhaps I am mistaken in giving an expression in that regard.

Hon. Mr. Stevens: Presumably what they want is the riparian rights and the water lots, whatever they might be, in front of the reserves. There is no such thing as foreshores on lakes; there might be, I suppose, between high and low water, but really the term does not apply to a lake or river. What they want really is unimpaired riparian rights, so that no one can put an obstruction on the water lots.

Mr. McPherson: Up to the present you only have the fear of that being done to you?

Mr. Paull: Fear of what?

Mr. McPherson: Of somebody interfering.

Mr. Paull: No, we have experienced it already in North Vancouver.

Mr. McPherson: I am talking of interior waters.

Mr. Paull: No, we have not experienced anything in non-tidal waters. The province says that the Indians only have riparian rights and we want to go beyond that.

Hon. Mr. BARNARD: I was trying to find out what you want in non-tidal waters. You say that you want to go beyond riparian rights; what do you want?

Mr. PAULL: Absolute beneficial interest in the water lots.

Hon. Mr. BARNARD: Lands under the water?

Mr. PAULL: In non-tidal waters, in many instances, by some action of the provincial government, the stream is diverted and the result is that erosion is caused by some action of the local authorities. Now, if we owned some part of the water adjoining the Indian reserve, when the water is diverted and encroachment occurs on what is formerly the Indian reserve, we could still maintain beneficial ownership of that part of the reserve which is now covered by water. I know of a case in Squamish where the provincial government diverted the course of a big river and wiped out a big parcel of our reserve. We want water for irrigation purposes in the interior. The Commissioners of 1878 gave so many inches of water to the reserve, but by some Act of the provincial government that was taken away from the Indians and the Indians in the interior are now at the mercy of the local authorities as to the amount of water they can secure from the streams, many of which run over their own reserves.

Hon. Mr. STEWART: Just now we are in litigation with the mining companies. The Indians have signed away rights, which I personally think they should not have done and do not propose to let them do, by which they have been deprived of their water rights. We are standing by that, I may say. That is what the Commission of 1912 stated—that they discovered that water rights were allotted to the Indians, but they spoke of it in the same way as they spoke about the fisheries.

Mr. DITCHBURN: When these reserves were allotted by the Reserve Commissioners, they made certain water lots. They found, however, under the agreement between the Dominion government and the province that water was not mentioned; that these Commissioners were merely instructed to set aside the land as reserves under the agreement. They found there was nothing in the Act allowing them to set aside water for the Indians, consequently they made certain allotments. An Indian could not take up water in the olden days, and the Commissioners did the best they could with the water allotments with the allotment of land. It was taken for granted that they had some value, but under the British Columbia Water Act these water allotments had no status whatever, and the only way an Indian can get water is by way of license under the provision of the British Columbia Water Act.

Dr. SCOTT: I think Mr. Ditchburn should go on and explain what has been done with reference to the water lots; he should complete his statement to show what the Department of British Columbia and the government, working together, have been able to do. These matters are practically settled now. There are a few cases——

Hon. Mr. STEWART: Would it not be better to let Mr. Paull get along with his statement now?

The WITNESS: The trouble is that the Indians are not satisfied with the conditions as they prevail now. At the moment we are governed by provincial statute. Now, it is hardly possible for a representative of the Indians of British Columbia to confine the statement—I am troubled in my mind with what I shall say in order to please this committee, and I want to be at liberty to say, as I see it——

Hon. Mr. STEWART: Just present your troubles, Mr. Paull.

Hon. Mr. MCLENNAN: Tell us your troubles as they exist now; not as they existed twelve or twenty years ago.

The WITNESS: The trouble is that twelve or twenty years ago—these conditions which exist to-day were brought about as the result of conditions then. We want hunting rights and fishing rights recognized. I dealt with the fishing rights last Thursday.

By Hon. Mr. Stevens:

Q. When you say you want hunting rights recognized, state briefly what you want.—A. We want to be allowed to hunt in all unorganized districts.

Q. Of course, you recognize, or you ought to recognize, and I hope the committee will recognize, that that is impossible. Supposing the Indians were given carte blanche to hunt at any season in any way they liked, in any unorganized territory, it would result in the game being more or less destroyed in a very short time. We might as well come to grips on that now; it is hopeless.—A. I have in mind the northern interior where the Indians absolutely depend on the hunting and trapping for their existence; they should be allowed to hunt all the year round, because that is the only way they can exist.

Q. Well, it depends on the methods. I would not object to a prospector, or an Indian getting food. That is recognized in our province already. I know I spent six months in the mountains and lived off what we could shoot, but to have unlimited rights to hunt as you like at all times is another question.—A. Now, the Indians in that part of the country had trap lines which were handed down from generation to generation, and which were always recognized by the Indians as being the property of particular Indians, but the trouble is the settlers go in there and take these trap lines, and the result is the Indian is prosecuted for coming in conflict with the white man who took his trap lines.

By the Chairman:

Q. Mr. Paull, can you not register the trap lines the same as the white man?—A. I suppose we could.

Q. Would that not settle the whole difficulty?

By Hon. Mr. Stevens:

Q. Is not the claim you are putting up now both in regard to the trap lines and the hunting that you claim on behalf of the Indians the right to trap and hunt in unorganized territory in utter disregard of any provincial regulation?—A. I do not know that we could, Mr. Stevens. However, that might be reasonable.

Q. Let us put it the other way. Are you satisfied to have the privilege of hunting and trapping in this unorganized provincial territory, subject to the regulations of the province?—A. I don't know what those regulations of the province are, Mr. Stevens.

Q. Put it this way; subject to the same restrictions and regulations as are imposed upon the white men in the same territory?—A. I would readily agree to that for trapping for commercial purposes.

Mr. O'MEARA: May I interrupt for a moment, hon. gentlemen?

Hon. Mr. MCLENNAN: I suggest we let Mr. Paull go on.

The WITNESS: We would consent to be governed by the regulations for commercial purposes, but where it is necessary to kill game for our livelihood, we should be allowed to do it.

By Hon. Mr. Stevens:

Q. There is a very generous provision in British Columbia for men—white men or Indians—killing for food; it has always been recognized.—A. Just a week before I left two Indians were fined $25 for killing a deer for food.

Q. The chances are they did not require it very badly.

By the Chairman:

Q. Where was that?—A. On the Saanich River.

Hon. Mr. STEVENS: That is very near to civilization.

The WITNESS: They had no money to get their meat from a butcher shop. Two years ago Indians went to the game warden and were told they did not need a permit as long as they were Indians; that they would be all right; and they operated under that misunderstanding. That news was spread around among the Saanich Indians—

Hon. Mr. STEVENS: There is the danger of the very thing you are asking; if they had secured a permit they would have been all right.

The WITNESS: They were told they did not need a permit.

Mr. DITCHBURN: That is organized territory; anything south of the 53rd is organized territory.

The WITNESS: These regulations are enacted by the provincial government, and the Indians are not acquainted with these regulations. It must be understood that at least 90 per cent of the Indians of British Columbia cannot read nor write.

By Hon. Mr. Stewart:

Q. Mr. Paull, just so that we will be clear on this; my understanding has been that the unrestricted hunting for food— not for commercial purposes—was largely confined to the northern territory.

Hon. Mr. STEVENS: Unorganized districts.

By Hon. Mr. Stewart:

Q. Hunting in the unorganized districts, and the claim is that they should not be restricted there. That is right? Or do you want that all over the whole province.—A. For the whole province. There is a provincial statute to the effect that no one can shoot within 500 yards of any dwelling; that operates in organized districts.

Hon. Mr. STEVENS: That is for the reasonable protection of human life. We cannot consider waiving a regulation of that kind.

Hon. Mr. STEWART: What I am trying to get at, Mr. Stevens, so as to be clear on it—and if I am wrong I want to be corrected—but my understanding was that it was confined to the northern territory, where it was unrestricted, but that the Indians were willing to abide by the game regulations in the southern part of the province.

Hon. Mr. STEVENS: Mr. Paull now complains of a case within 30 miles of the city of Vancouver—in an organized district, where there are scores and hundreds of white settlers—where two Indians were arrested for shooting in that district, and this, he complains, is an invasion of what he says is an Indian's inherent right. I submit that this committee cannot for a moment consider a privilege of that kind.

The WITNESS: The reason that is brought about is because the government of Canada has said they have settled everything, and I am illustrating these different matters which have not been settled.

Hon. Mr. STEVENS: Very good, Mr. Paull, but I want to make it clear that as far as I am concerned, we cannot for a moment consider that as a reasonable claim.

Hon. Mr. STEWART: The same condition is prevailing right across Canada in the provinces which control their natural resources, and indeed, in the prairie provinces. The price of fur has gone up so materially in recent years that the

white men are becoming very aggressive hunters. Formerly, the Indians were practically unmolested, but now they are being crowded out. That is a matter upon which we are working in British Columbia, and in the rest of the provinces of Canada.

Hon. Mr. STEVENS: I think every effort should be made to help the Indians in unorganized territory; I agree to that, within reason, but not to the extent suggested by Mr. Paull.

Hon. Mr. MCLENNAN: And to protect his trap lines from improper interference from white men.

Hon. Mr. STEVENS: That can be done by registration.

Hon. Mr. STEWART: I think when we come to consider the matter, we can throw considerable light on the whole thing.

Hon. Mr. STEVENS: Surely.

By Mr. McPherson:

Q. What you want is unrestricted hunting rights all over British Columbia, especially in the unorganized districts?—A. Yes.

Q. You have that right there now, but you also want it in the organized districts?—A. Yes.

By Hon. Mr. McLennan:

Q. Can you tell us more about the fishing rights in tidal waters? What was taken away from you—from your foreshore—from your rights of the foreshore? —A. For fishing?

Q. For anything that interferes with the rights you believe you ought to have.—A. The province of British Columbia does not recognize that the Indians have any foreshore rights, and they refuse to allow that. The only foreshore upon which we could hope to come to some agreement, is the foreshore in public harbours; that comes under the jurisdiction of the Dominion. We hope to come to some understanding with the Dominion on that, but it is almost hopeless to expect any concessions in that respect from the province.

By Hon. Mr. Barnard:

Q. When a foreshore is sold in a public harbour by the Dominion, do the Indians get any of the purchase money?—A. In earlier days, the Indians were getting all the money accruing from the sale of the foreshore—I am speaking of the Saanich Indian's foreshore—but the Quit Claim Deed issued by the Dominion government in 1918 allows them only to receive 50 per cent of the net rental, whereas in former years we got 100 per cent from anything accruing from the sale of our foreshore.

Q. Who gets the other 50 per cent?—A. The Vancouver Harbour Board.

Hon. Mr. STEVENS: The Saanich, of course, was a provincial matter.

The WITNESS: Is there any further question on that? Now, Section eight of the McKenna-McBride agreement provides that new reserves be set aside from existing Crown lands at this time. The Indians contend that there was insufficient area of Crown land made available to the Commission at that time; consequently parcels of land, which the Indians asked for in their representations to the Commission, could not be procured for them. We object to the fact that these cut-offs as recommended by the Commission, are to be taken away from us without our consent. The original thing under the McKenna-McBride agreement was that they could only be sold with the consent of the Indians. Now, since the law of 1920, these cut-offs can be taken away from us without our consent.

By Hon. Mr. Stevens:

Q. Did you have an opportunity of appearing before the Commission when it was sitting?—A. Yes.

Q. And did you have full opportunity of presenting your views?—A. To present our views as regards the matters they asked for.

Q. Did you present any views on this point?—A. This agreement was not before us.

Q. On this point, of reduced acreage of the reserves?—A. They discussed that, but we did not want any of our existing reserves taken away, and in addition to that, we asked for new reserves.

By Mr. McPherson:

Q. Did they give you any compensation for what they took?—A. Not yet.

Hon. Mr. STEVENS: They are to get it when they are disposed of.

The WITNESS: Now, I would like to ask the committee if it is within the powers of this committee to deal with a great error that the Commission made in their report. Perhaps Mr. Stevens will know of this. The Commission reported that the Capilano Reserve was surrendered, whereas it was never surrendered, but it was recorded that it was surrendered, and I would appeal to this committee to take such action as will show the province that it was not surrendered.

Hon. Mr. STEVENS: I am inclined to agree with the Indians that it was never surrendered, so I am with you very much on that.

The WITNESS: Thank you very much, Mr. Stevens.

Hon. Mr. STEVENS: I never did believe it was properly surrendered.

The WITNESS: Perhaps I may deal with what we rely on in support of our claim of aboriginal title to a limited extent.

By Mr. Hay:

Q. That is the agreement you have—these are major agreements?—A. These are some of them.

Mr. HAY: Let us deal with them.

Hon. Mr. STEVENS: Perhaps I could help him for the moment.

By Hon. Mr. Stevens:

Q. Would you agree that this memorandum by Kelly and Teit entitled "Conditions as proposed as basis of settlement," as appears on pages 36, 37 and 38 of the report of the proceedings of this committee, contain in detail your claims?—A. Yes.

Hon. Mr. STEVENS: If he will agree to that, we have the whole thing in our hands.

The WITNESS: I agree to that, but we made some further additions to that, Mr. Stevens.

By Hon. Mr. Stevens:

Q. Let us have further additions, and then we will have the whole thing complete.—A. Now, the additional demands we make are embodied in Appendix H of the appendices submitted by Doctor Scott, on page 65.

Q. What part of that?—A. It starts on page 67—

Q. Entitled "Fishing Rights, Hunting, Timber, Funded Money, Pelagic Sealing, Education, Medical Attendance and Hospitals?—A. Yes.

Q. With the addition of these, it represents your claims?—A. Yes.

Hon. Mr. STEVENS: That will give us the whole thing.

Hon. Mr. MURPHY: Yes, that abbreviates matters considerably.

By the Chairman:

Q. Is there anything more you wish to say?—A. I would like to say how we support our claim for aboriginal title. In the first place we claim we have a beneficial interest in the soil, because of the fact that we are the aborigines of the country. That has never been disputed, and it is recognized, and we have never ceded title in this country. Now, in support of that, we base our claim on the opinion expressed by the Minister of Justice in 1875. We are not in agreement with the mode of dealing with the Indians which was related by Dr. Scott in his memorandum. That is, that the ways and means of how these Indians would be compensated for the extinguishment of their title was decided by an Order in Council, or that it was embodied in the Commission of Commissioners to visit the Indians. We are not in agreement with that system. The terms should be arrived at by negotiation. We respectfully submit that that has been the policy of the Imperial Government in connection with British Columbia, and in support of that contention may I be permitted to read a short despatch by Lord Carnarvon. On the 11th of April, 1859, Lord Carnarvon wrote Governor Douglas:—

> I am glad to perceive that you have directed the attention of the House to that interesting and important subject, the relation of Her Majesty's Government and of the Colonies to the Indian race. Proofs are, unhappily, still too frequent of the neglect which Indians experience when the white men obtain possession of their country. Their claims to consideration are forgotten at the moment when equity most demands that the hand of the protector should be extended to help them. In the case of the Indians of Vancouver Island and British Columbia, Her Majesty's Government earnestly wishes that when the advancing requirements of colonization bear upon lands occupied by members of that race, measures of liberality should be adopted for compensation to them for the territory which they have been taught to regard as their own.
>
> Now I want to quote an important paragraph, from the opinion of the Minister of Justice in 1875 in that connection. It appears at page 40 of the proceedings of Wednesday, March 30th.
>
> The undersigned believes that he is correct in stating, that with one slight exception as to land in Vancouver Island, surrendered to the Hudson Bay Company, which makes the absence of others the more remarkable, no surreneder of lands in that province has ever been obtained from the Indian tribes inhabiting it, and that any reservations which have been made, have been arbitrary on the part of the government, and without the assent of the Indians themselves, and though the policy of obtaining surrenders at this lapse of time, and under the altered circumstances of the Province, may be questionable, yet the under signed feels it his duty to assert such legal or equitable claim as may be found to exist on the part of the Indians.

Now, this is the important part:—

> There is not a shadow of doubt, that from the earliest times, England has always felt it imperative to meet the Indians in council, and to obtain surrenders of tracts of Canada, as from time to time such were required for the purposes of settlement.

What I want to emphasize in that paragraph is that England has always been prepared to meet the Indians in Council. That would appear not to be in accordance with what Dr. Scott mentioned as being the system in Canada.

By Hon. Mr. McLennan:

Q. Mr. Paull, may I ask you were not those meetings with the Indians that were held by Governor Douglas, and that you referred us to the other day, instances of meeting the Indians in Council, in British Columbia?—A. It is possible that that is one instance. But I do not think it would meet the situation if the Government of the day was, by Order in Council, without consulting the Indians, just to set out what should be their conditions of settlement. We respectfully submit that we should be given the privilege of submitting our views upon any particular case.

By Hon. Mr. Stevens:

Q. Let me ask you one or two questions on this, Mr. Paull. You have made very extensive researches?—A. Yes.

Q. As you gave evidence to us the other day?—A. Yes.

Q. And, I may say very valuable researches. Is it not true, that up until recently, the Indians have always discussed with the Dominion and Provincial authorities their rights on the basis of the adequacy or otherwise of the area of their reserves; that is, that the reserve was too small or too large, as the case may be?—A. Yes.

Q. That has been the basis until Mr. O'Meara advanced before Parliament and other bodies the claim of the aboriginal title to the whole of British Columbia?—A. No, I think the Indians took steps before that.

Q. Will you point out when, please?—A. In 1906, Chief Joe Capilano and two other chiefs waited on His late Majesty, King Edward VII.

Q. Yes, I remember that?—A. And he was told by some authority in England, that he should go back to Canada, and take this matter up with the Canadian Government, and if you cannot get satisfaction there, come back to us, and we will take it up.

Q. Have you any record of that? Anything you can put in as evidence of that?—A. Only this, that Chief Joe Capalino told me that himself.

Q. I remember the occasion, and I knew Chief Capalino very well, but you could hardly call that evidence upon which to base a claim for aboriginal title, could you?—A. No, no. The reason I say that I got that from Chief Joe Capalino is, because I was groomed in my young days to be his successor, and he would speak to me more confidentially and earnestly than he would to anybody else.

Q. But prior to that, the adjustments were always made on the basis of their reserved areas?—A. Well, to be plain; the Indians for some reason or other, the older people, had some feeling and they had absolute faith in the Queen. They said, "The Queen will do this for us, you are not treating us right. And the Queen said it would be this way or that way."

By Mr. Hay:

Q. Do we gather from your remarks that no recommendation, no matter on what generous lines it might be, from this Committee, and if concurred in by both Houses, would not meet with your approval unless you were consulted?—A. If the conditions were arbitrary to what we have submitted, then, we would not be in a position to agree with them. We have always said we are willing to come to some amicable understanding.

By Mr. McPherson:

Q. Providing all the terms you suggest are met?—A. That is a pretty sweeping statement to make. I think we have said in our petition that we would not be unreasonable.

Mr. HAY: I was absent the other day, Mr. Chairman, may I ask if all the tribes are agreed among themselves?

The CHAIRMAN: I do not think so, from what has been said.

Hon. Mr. STEVENS: No, they are not.

By Mr. McPherson:

Q. When I made that remark, Mr. Paull, I did not mean to be arbitrary; but I gathered this, that unless all the terms are as outlined to-day in the printed record, you are not in a position to agree with them?—A. I think we may make some modifications if we are shown that it cannot be got or is not a reasonable claim.

Q. Take that hunting claim, for instance. Don't you realize personally, that it is impossible to throw the organized territory open to indiscriminate hunting as a matter of safety only?—A. We recognize that. We would not ask to hunt in the city of Vancouver, or close to it.

By Hon. Mr. Barnard:

Q. But the only reason would be because there is nothing to shoot?—A. That would be a reason.

By Hon. Mr. McLennan:

Q. Another fact I gather, Mr. Paull, is that even if you agreed with this Committee, it would not follow that all the Tribes in British Columbia would be bound by what you agreed to?—A. Mr. Kelly has made several statements here in that connection, and in some documents that we have presented to the Government, it is said that we would be willing to accept something reasonable, and perhaps it would be well for Mr. Kelly to deal with that himself, since he has made that statement to the Premier, and to the Hon. Charles Stewart in the past.

By Hon. Mr. Stevens:

Q. Have you finished your statement, Mr. Paull?—A. I have almost finished, sir. I wish in support of our claim for aboriginal title to read from the statement of the Minister of Justice at page 43. It is part of the same statement that I have previously quoted from,—

> Considering then, these several features of the case, that no surrender or cession of their territorial rights, whether the same be of a legal or equitable nature, has been ever executed by the Indian tribes of the Province—that they allege that the reservations of land made by the Government for their use, have been arbitrarily so made, and are totally inadequate to their support and requirements, and without their assent—that they are not averse to hostilities in order to enforce rights which it is impossible to deny them, and that the Act under consideration, not only ignores those rights, but expressly prohibits the Indians from enjoying the rights of recording or pre-empting lands, except by consent of the Lieutenant-Governor;—the undersigned feels that he cannot do otherwise than advise that the Act in question is objectionable, as tending to an assumption which completely ignores, as applicable to the Indians of British Columbia, the honour and good faith with which the Crown has, in all other cases, since its sovereignity of the territories in North America, dealt with their various Indian tribes.
>
> The undersigned would also refer to the British North America Act, 1867, section 109, applicable to British Columbia, which enacts in effect that all lands belonging to the province shall belong to the province, subject to any trust existing in respect thereof, and to any interest, other than that of the province, in the same.

Now, I further contend that that opinion given in 1875 has been supported by a decision of the Privy Council in the case of the Attorney General for the

Dominion of Canada, appellant, vs. Attorney General for Ontario, respondent, and the Attorney General for Quebec Appellant, vs. Attorney General for Ontario, Respondent. This is an appeal from the Supreme Court of Canada, reported in Law Reports appeal cases 1897, at page 199. In this case sections 109, 111, and 112 of the British North America Act were dealt with, but for the purpose of my case, I refer only to Section 109 as their lordships deal with it. I am now reading an extract from the judgment of their lordships, delivered by Lord Watson, at page 210, last paragraph. (Reading):

> The expressions subject to any trusts existing in respect thereof? and subject to any interest other than that of the province? appear to their lordships to be intended to refer to different classes of right, their lordships are not prepared to hold that the word "trust" was meant by the legislature to be strictly limited to such proper trusts as a court of equity would undertake to administer; but, in their opinion, it must at least have been intended to signify the existence of a contractual or legal duty, incumbent upon the holder of the beneficial estate or its proceeds, to make payment out of one or other of these, if the debt due to the creditor to whom that duty ought to be fulfilled.
>
> On the other hand, "an interest other than that of the province in the same" appears to them to denote some right or interest in a third party, independent of and capable of being vindicated in competition with the beneficial interest of the old province.

We contend, Mr. Chairman, and hon. members of the Committee, that that decision supports the decision of the Minister of Justice, in 1875.

Now, we also know that the Crown has dealt with the natives of the country in a fair way by recognizing the native title, such as in Canada east of the Rockies. That has been recognized in New Zealand also, and the native title is recognized in Southern Nigeria.

These are just a few of the principal reasons with which we can support our claim.

By the Chairman:

Q. Is that all you wish to say, Mr. Paull?—A. Yes, Mr. Chairman. That concludes my presentation of my case.

The CHAIRMAN: If it is the pleasure of the Committee we might hear Mr. MacIntyre now and get through with him. It is as the Committee wishes. Mr. MacIntyre, you will state to the Committee what you have to say?

Mr. MACINTYRE: Mr. Chairman and members of the Committee, as counsel for the Interior Tribes only, I have a few remarks to make. As I have explained to the Chairman on a previous occasion, when the Indian chiefs appear before a council or authority, and bring a counsel with them, the most that they expect of their counsel is to sit and look wise, and advise them when they request him to do so. They never expect him to orate at all; they do that for themselves. So my instructions are just to make a few remarks, so as to place the chiefs whom I represent before you.

But, in the first place, Mr. Chairman, I should clear up the question of who represents the Tribes of the interior. I will only require one or two minutes to do that. Mr. Paull—I think his name is,—has assumed that he represents certainly some of the Okanagan tribes. Now, there is nothing to be gained by simply contradicting that, but I may say that having lived for a quarter of a century adjacent to and in confidential council with these Tribes—and I may mention two or three of the prominent counsel, the late Mr. Denis Murphy, and the present Mr. Stewart Murphy, and Mr. James Henderson, and other counsel who, like myself had represented the Indians of the interior right through to Prince George, I have assumed that we have represented them and I can say that during

all those years, I have never in my life-time seen Mr. Paull or the Reverend Mr. Kelly. They may have been in Kamloops, but that is all I know about it. I have here a list of the Indian chiefs whom I have represented, over their own signatures by the three chiefs and an additional chief who came with them this time. I have promised to give this to the secretary. If the Committee wishes, I can rapidly go over it. There are 29 chiefs altogether.

Hon. Mr. STEVENS: Just hand in the list. The names mean nothing.

Mr. MACINTYRE: I have already handed it in.

Hon. Mr. STEVENS: 29 of them, you say?

Mr. MACINTYRE: Yes sir, 29.

Hon. Mr. MCLENNAN: Could you tell about how many people are represented by those 29?

Mr. MACINTYRE: Or rather, I suppose, you mean bands and measures?

Mon. Mr. MCLENNAN: Yes.

Mr. MACINTYRE: That is what I mean. The 29 represent, as far as I can make out, 29 reserves. But what I suppose the hon. Senator meant was, that they are separate reserves, and not two chiefs in one locality. Now, this list represents reserves reaching from Port George away at the north, right down to the American boundary, and practically the whole of the interior.

Mr. HAY: How many people?

Mr. MACINTYRE: I cannot give you the number.

Mr. HAY: One thousand?

Mr. MACINTYRE: I have not the faintest idea.

Hon. Mr. STEVENS: That includes all the Indians from Fort George, down the Thompson and the Lillooet?

Mr. MACINTYRE: Yes.

Hon. Mr. BARNARD: East to the coast range?

Mr. MACINTYRE: That is about it.

Hon. Mr. STEVENS: And the Kamloops and Okanagans?

Mr. MACINTYRE: Most assuredly, the Okanagans.

The CHAIRMAN: There is a letter that has been placed in my hands which I want to read to the Committee. (Reading):

OLIVER, B.C., Mar. 16, 1927.

DUNCAN C. SCOTT,
Department of Indian Affairs,
Ottawa, Ont.

DEAR SIR: I have heard John Chillihitza has gone to Ottawa but I do not know the object of his going.

I wish to inform you that he is not representing the Indian Tribes from the interior of British Columbia, but he might be a representative from the Shuswap tribe.

Last May I asked him what was his purpose of going to Ottawa but wouldn't give me an answer or explain his reason for going.

Yours truly,

NARCISSE BATISE,
Committee of Interior Tribes, Oliver, B.C.

Mr. MacIntyre: Dr. Scott showed me that letter and I was aware of such a letter being in existence. I told Dr. Scott, and he ought to have known himself that Chief Narcisse Batise, is an obscure chief down there and represents nobody but himself. The existence of his protests against Johnnie Chillihitza has been known for some four or five years. I would like to ask if he is the Chief that was put on to this Allied Committee as representing the Indian Tribes; may I ask if that is the case? Dr. Scott would be able to tell me.

Mr. Kelly: I think, as Chairman of the Executive Committee of the Allied Tribes, that it is my duty to answer such a question. The purpose of the formation of the Executive Committee of the Allied Tribes was to bring before the Government such grievances as have been brought before this Committee. On that Executive Committee were represented all the Indian Tribes of British Columbia, from every part of the interior of British Columbia, and they have never repudiated their membership on that Executive Committee to this day, except by a letter which was sent out by Chief John Chillihitza, not over the signatures of these chiefs, but simply with their names written down by the interpreter for Chief Johnnie Chillihitza. That is what has been done. They have never repudiated; those tribes who became members of the Allied Indian Tribes have never repudiated their membership.

Mr. Hay: Are they now represented?

Mr. Kelly: They have never repudiated.

Mr. Hay: Have you had any indication now that they are repudiated?

Mr. Kelly: Nothing at all, except what has been brought before us by this gentleman. I take it that this Committee, which is the High Court of Parliament, has been constituted to consider the petition of the Allied Tribes of British Columbia, and if these Tribes which Mr. MacIntyre represents are not members of the Allied Tribes of British Columbia, then I contend they have no business to be here.

Mr. MacIntyre: I would like to ask Mr. Kelly how many tribes of the interior he represents.

Mr. Kelly: We have filed a list with the Secretary.

Mr. MacIntyre: Did you have the signatures of any of them?

Mr. Kelly: Yes. At the formation of our Executive Committee they were present.

Mr. MacIntyre: What year was that?

Mr. Kelly: In the year 1916. We have the signatures of Chief Johnnie Chillihitza and Chief Basil David, who are the leading Chiefs of the interior.

Mr. MacIntyre: That was in 1916?

Mr. Kelly: Exactly.

Mr. MacIntyre: Did you have any connection with them, so to speak, since 1916?

Mr. Kelly: Yes.

Mr. MacIntyre: Where and when?

Mr. Kelly: In North Vancouver, when their alliance was made. There were certain tribes who were not in the alliance and they came into the alliance, and at that meeting these two chiefs were present who are here this morning.

Mr. MacIntyre: What year was that?

Mr. Kelly: I think it was in January, 1922.

Mr. MacIntyre: I will just recall it to you, so as to make it clear; there was a meeting took place in Vancouver three or four years ago at which the Hon. Minister, Dr. Scott and Mr. Ditchburn were present. Now, was there not some sort of a Committee struck at that time on which Mr. Alex. Leonard was put?

Mr. KELLY: There was no committee struck.

Mr. MACINTYRE: When was Alex. Leonard put on?

Mr. KELLY: June, 1919.

Mr. MACINTYRE: Is he a Chief?

Mr. KELLY: I am not prepared to say; he was a representative of his people.

Mr. MACINTYRE: I will differ with you there, but we will not argue on that point. What about Narcisse Batise?

Mr. KELLY: He is a son of Chief George Batise.

Mr. MACINTYRE: Is he on the Committee?

Mr. KELLY: Yes.

Mr. MACINTYRE: That is two. Were there any others representing the Tribes of the Interior?

Mr. KELLY: Chief Thomas Adolphe.

Mr. MACINTYRE: Is he actually a chief?

Mr. KELLY: Actually a chief.

Mr. MACINTYRE: These three, you say, represent the Tribes from the Interior?

Mr. KELLY: No, Chief Stephen Retachet is also another member.

Mr. MACINTYRE: Where does he live?

Mr. KELLY: He is also from the Lillooet district.

Mr. MACINTYRE: Mr. Minister, I propose making you acquainted with what actually took place at this meeting, because you were there. A circular was sent out, as I reminded Mr. Ditchburn only last evening, calling a meeting down there. Chief Johnnie Chillihitza was very much worried, as Mr. Kelly properly stated, and the other man——

Mr. KELLY: Mr. Chairman, I contend that if Mr. MacIntyre is here on any kind of business from that of our petition, he has no right to take up the time of this Committee which was appointed for one specific purpose, to consider the petition of the Allied Tribes of British Columbia.

Mr. MACINTYRE: Mr. Kelly is explaining to you why this Committee was appointed and what its duties were.

Mr. HAY: Is there any difference between these inland Tribes and the coastal Tribes?

Mr. KELLY: I would like to say this and explain that there is no difference.

Mr. HAY: I do not think we are concerned as to local differences between these Tribes.

Mr. KELLY: I would like to say that there has been agitation by several factions from the interior——

Mr. MACINTYRE: This is altogether out of order and I object. I have not interrupted any other speakers nor attempted to butt in.

The CHAIRMAN: I think you had better let Mr. MacIntyre finish what he has to say.

Mr. MACINTYRE: On the way down to that meeting in Vancouver I met Chief Johnnie Chillihitza, he had hurried away from important engagements in his harvest fields, so to speak. I met him at Spence's Bridge and on finding out that Mr. MacIntyre was on his way down there on Mr. MacIntyre's own business, he asked me to call on the Minister, Mr. Stewart, and explain that the Indian Tribes of the interior wished to be represented only by their own men.

Hon. Mr. MURPHY: This is in 1922?

Mr. MacIntyre: I think it was 1923. I could not give you the date exactly, but it was a very important meeting. The Minister, or Dr. Scott, or Mr. Ditchburn can give you the exact date. Mr. MacIntyre went down there and met Alex. Leonard.

Hon. Mr. Stevens: Is that yourself?

Mr. MacIntyre: Yes.

Hon. Mr. Stevens: Then say "I".

Mr. MacIntyre: I met Mr. Alex. Leonard down there. He is one of the most efficient interpreters in the country. He has never got above the grade of Captain, and consequently the Indian Chiefs would no more think of putting him on as their representative on a Committee than the Minister would of putting his stenographer, no matter how efficient the stenographer might be.

Hon. Mr. Murphy: Is this man an Indian?

Mr. MacIntyre: He is a half-breed, but he ranks as an Indian, because he lives on the reserve. He has obtained the rank of Captain, but has never got to be a sub-chief, or anything like that. He was sent down on that occasion with merely a watching brief to find out and report exactly what occurred; that was his sole purpose. I met him on the street and asked where the meeting was to take place. I took the trouble to go around to this meeting and sent a note in to Dr. Scott, whom I had met repeatedly before and with whom I was on very friendly terms, acquainting him with the fact that Chief Johnnie Chillihitza found it impossible to come down and was worried at to what had taken place and had asked Mr. MacIntyre to see the Minister and to lay before him three medals which he is very proud to wear. These medals were presented to him by different individuals; one by Queen Victoria, and one by His Holiness, the Pope. Mr. MacIntyre sent in notes twice to Dr. Scott asking for an interview with the Minister, but found it impossible to get, and accordingly had to leave the meeting. I think it was that same evening that Mr. MacIntyre took the trouble to find out—

Hon. Mr. Stevens: Why don't you say "I?"

Hon. Mr. Murphy: What has all this got to do with the business of the Committee, who presented medals or who wears them?

Mr. MacIntyre: I want to put the Chief, who is to present his grievances to you, in the proper position and to show why he did not present these grievances before.

Hon. Mr. Murphy: Who is this Chief?

Mr. MacIntyre: Chief Johnnie Chillihitza.

Hon. Mr. Murphy: Is he here?

Mr. MacIntyre: Yes.

Hon. Mr. Murphy: Could we not hear him?

The Chairman: I think the Committee understands the situation.

Mr. MacIntyre: The majority of the matters brought before you by the coast Indians do not concern the Interior Indians at all. They were careful to draw up a list. The first one is in regard to the foreshores. So far as the interior Indians are concerned, we are not bothered about that. No. 2; further land grants by the B.C. Government. We do not understand what that means. No. 3; Unrestricted rights to take fish for food purposes. They claim that.

Hon. Mr. Murphy: Who claim that?

Mr. MacIntyre: The interior Indians claim that. No. 4; full rights to fish for commercial purposes off the foreshores of Indian reserves. We are not concerned with that. No. 5; rights for commercial fishing without license fee. We are not concerned with that. No. 6; right to secure license for purse and

seine fishing at half usual fee. We are not concerned with that. No. 7; right to cut timber outside of reserves for fuel and for the manufacture of canoes. They are allowed to do that, so really they do not find it necessary to trouble the Committee about it. No. 8; amendment of the Pelagic Sealing Treaty. We are not concerned with that. No. 9; Ample water for irrigation purposes. What they require is the water pertinent to the land, especially in the dry belt. This is the most serious one. There was a concrete case which was called to the Minister's attention a week or two ago. This was close to the Kamloops reserve, through which the Canadian National runs. This is a very old reserve, and for hundreds of years the Skidam Creek has been pertinent to that. Nearby is the valuable ranch, known as The Harbour Ranch, owned by the old Hunter people. Within the last two or three years, the water rights of the Indians have been absolutely taken away by the local Provincial Water Board, upon the ground that the right was granted to the Harbour Ranch in priority to the Indians. It startled everybody, but there is the position. That is all I have to say on that.

Hon. Mr. STEVENS: Did they ever use that for irrigation purposes?

Mr. MACINTYRE: Right along.

Mr. DITCHBURN: That was a decision of the Court of Appeal of British Columbia.

Mr. MACINTYRE: Was that case appealed from?

Mr. DITCHBURN: The Court of Appeal decided that case. The Water Board gave the Indians priority.

Mr. MACINTYRE: I think you are mistaken.

The CHAIRMAN: That is right.

Mr. DITCHBURN: They gave priority over the ranch and the Ranch Company appealed against it.

Mr. MACINTYRE: Over the Harbour Ranch?

Mr. DITCHBURN: Yes.

Mr. MACINTYRE: And then it went to the Court of Appeal?

Mr. DITCHBURN: Yes.

Mr. MACINTYRE: It was on the evidence of James Todd that they lost the right, but it must have been the way it was brought up before the Board that caused the Board to give that decision. But at any rate, Mr. Ditchburn will admit that the Indians of the Kamloops reserve have lost that right?

Mr. DITCHBURN: That is right.

Mr. MACINTYRE: It was simply a rank outrage. We are interested in No. 9. No. 10; Unrestricted right to hunting and trapping and hunting areas to be reserved where necessary. They claim that also. No. 11; Extension of the present school facilities. They are completely satisfied. No. 12; Free medical and hospital attention. They get a fair amount of that, so that does not concern them. No. 13; Sufficient grazing areas. This is a very important matter in the upper interior and the dry belt; they are not getting a square deal there. No. 14; Mother's and Widow's pension. They are not concerned with that. No. 15; Cash compensation. They do not quite understand what the other Committee is driving at. No. 16; Reimbursement of about $100,000 spent. They do not quite understand that. I have named those that these Indians are specially concerned with.

There is one question that I can explain more easily than the Indians; that is, as to tenure in the land.

Hon. Mr. MURPHY: You mean aboriginal title?

Mr. MACINTYRE: I am not going into that at all. They must have some sort of tenure, that is the only term I can apply to it; they must have some sort

of holding so that they cannot be dispossessed of it because they reclaim too much of the land. That particular outrage was perpetrated on this very Chief himself, and it still exists. He, with his two brothers, 50 years ago—my authority for this is the well known priest, Rev. Father Lejeune—reclaimed large acreages between the Douglas Cattle Company on the one side, and the Triangle Company on the other. He suddenly found out that the Department proposed calling upon him to show whether he had sufficient cattle to pasture on that, and if he had not they would bring it up with the Minister. I leave that just as it is, because it could not be settled by the Committee.

The CHAIRMAN: That is the reserve, Mr. MacIntyre?

Hon. Mr. STEVENS: Outside the reserve.

Mr. MACINTYRE: That is part of the reserve.

Hon. Mr. STEVENS: Is it in the reserve?

Mr. MACINTYRE: Yes, it is in the reserve.

The CHAIRMAN: What you are referring to is that they want some individual title to the land?

Mr. MACINTYRE: Yes, individual title to the land for their lifetime, after they have reclaimed it. You can call it "Squatters Rights," or anything else you want to, but they want to be certain that if they fence in the land and build the ditches on the promise of the agent that it shall be looked upon as theirs, and their children's, they shall have that right. I do not know that I have any more to say.

The CHAIRMAN: What Indians have you here whom you want to be heard?

Mr. MACINTYRE: I think only Chief Johnny Chillihitza, about the upper interior. That is the usual way they do; they insist upon three or four attending, but they fix upon one to present their case.

Hon. Mr. MURPHY: As their spokesman?

Mr. MACINTYRE: Yes.

The CHAIRMAN: I think the committee will have no objection to that.

Mr. MACINTYRE: Oh, yes; there is one thing—about the deer. Mr. Stevens will pardon me for mentioning that. In an organized district an actual instance took place three weeks ago. The Indians have a grievance there and it should be corrected. My firm defended two Indians for killing two deer out of season. The hardships were very great in each case. Each Indian came before the magistrate and announced he had killed the deer. In one case the Indian had a mother-in-law, another relative practically stone blind, and two others almost helpless; in the other case the Indian had a father and one or two others, and the question was asked of the provincial police officer in the presence of the magistrate if these facts were correct, and the provincial policeman corroborated those facts; so it was a clear case of killing for food, but in spite of that, a heavy fine was inflicted by the magistrate, who said he saw no way out of it. That is all I have to say.

CHIEF JOHNNY CHILLIHITZA called and sworn.

(The evidence of this witness was given in the Okanagan language, and was translated into English and vice versa by Mrs. Williams, sworn interpreter.)

The CHAIRMAN: Does any member of the committee wish to ask this witness any questions?

The WITNESS: I am very well pleased to meet all the committee here. I did not come here to Ottawa to say what is not true; I came to speak about what is true. You see how old I am, and still I try to speak about my country.

By Hon. Mr. Stevens:

Q. How old are you?—A. I am about 80—nearly 80. My forefathers and my own father and my other people were all old men, and when they discuss about that country I know every one of them, because I have been listening to them and know how they speak about the country.

By Mr. Hay:

Q. What is your grievance? What remedies have you to suggest that would make it more comfortable for your tribe?—A. I know what I am to say about it. I am going to refer to it. My forefathers and my own father were some of the leading chiefs of British Columbia and they never relinquished their titles, but now they are dead, and I am their successor, and I still have the title; I did not give them to anybody, and now I come over here in Ottawa so that the government in Ottawa will give me power in my titles and my rights.

The Indians do not want to be enfranchised; they want to be as they are. All the Indians want is to be just Indians, and not to be taken as white people, and made to live like the white people; they want to be the way their forefathers used to be, just plain Indians. That is what my people want. They do not want to be enfranchised. Long ago the Indians had Indian laws, but since the white people came, the Indian laws are cast aside by the white people, and they impose their white man's law on the Indians. I am going to refer to the time when Sproat came as a messenger from the Queen, and he said "The Queen has heard of you people here, and sent me over to have a conference with you Indians." They asked him to tell the Indians what the Queen intended to do for the Indians, and Sproat said "The Queen has learned of your country, and it is a big country, and the Queen wants to keep your reserves, and put them in four posts," and Sproat said, "Now, if you Indians believe in the Queen, and she will say this—I will tell you what she intended to do," so they asked him to tell them what the Queen was saying, and he said "If you believe in the Queen, and take her as your sovereign, she will take care of you always; she and her successors will look after the Indians; if in any way you have trouble in your country, you will speak to the Queen and she will send word over and have the trouble fixed up for you Indians." That is what the messenger Sproat said.

The Indians did not seem to agree to have their lands in four posts, and then Sproat told the Indians that if they consented to have their reserves posted,—that is, made out the reserves—there is another promise that the Queen made that she would send another messenger—even if it was not Sproat it would be somebody else—to come and have another conference with the Indians about their country, and he said, "When the messenger comes again you will speak about your country; it is a big country, and all what is in it, and you Indians and the Queen will make an agreement." So the Indians were told by Sproat that the Queen would not touch their Indian rights and their rights would include their right to keep their native titles. Sproat told a lot of things to the Indians of what the Queen said, but I will not speak about that, as it will take up too much time, but the Indians have kept in mind what Sproat told them concerning the white men.

I want to speak to you about grazing. Long ago the Indians already started to have cattle, horses, and everything, and they had the use of the range and the Indians succeeded in getting large stock for themselves, and at that time they had big use of the range; it was not under control then, and they had a lot of stock, and it increased because there was range for the Indians at that time—open range. Now the white people sell it between themselves, and they are all taken up, and the Indians have no more land, and finally the Indians' cattle diminished, because they were short of land. There is one white man —his name is Mr. Ward of Douglas Lake—who took all the land and the

Indians have not any pasture, and their horses, of course, are diminished because they had not sufficient land. So, for that reason, the Indians came over and decided to come here and have a conference with the Government about their country and their lands, so that they will get enough range for their stock. That is what they want; they want grazing land for their horses and cattle. I am not the only one who has not had sufficient land in my country; there are 28 reserves there just the same; they have not enough land. At the time Sproat came and had the reserves surveyed out for the Indians he said, "This stream that runs through the reserve is for your use; after a while you maybe will get to know how to cultivate your land, and that will be for your water—for irrigation. Now, I am going to record this water for you Indians with the Queen." Now, the water is taken away from the Indians by the white people. It is not only at Kamloops, but all over the reserves, that their waters are taken away, but Kamloops is the worst that is badly treated by the white people about the irrigation by the waters. Long ago, when they had the use of the waters, the Indians had a lot of grain and potatoes which they planted, and they sowed their wheat, and were just like cattle when the cows are fed. Now the Indians are poor because their water is taken away from them, and the water is taken from the Indians in Kamloops by the harbour account, and their land is dried up, and they have no water to irrigate it. Now, the Indians want to have their water given back to them. Right in my own country there is a big lake that is up in the mountains, and from that lake the stream runs out, and from that stream the Indians used to get their water, and the source of the lake is taken by the white man on the other side—the feeder of the water is taken by the white people. The other part of the feeder is going to be taken by Mr. Warwick, and then there will be no more water for the Indians, and the lake will be dried up. That stream that goes out of the lake is used by the Indians for their irrigation. There are 16 ditches that have been made from that stream.

Ever since the Indians came into their lands they have never known anything for their food only the deer and the fowls. There were plenty of deer and plenty of fowls. The Indians killed both deer and fowls, but still there was always plenty of game. Now, the white people have made laws concerning the deer and they have told the Indians not to kill any more deer. They say to the Indians: "It is you Indians that exterminate the deer, and the fowl by killing them off in such numbers; now, we will not allow you to kill any more deer; if any of you Indians is found out killing the fowl or the deer, you will be sent to prison." The Indians do not know why it is that they are treated in that way. Now, there are some Indians who are not well-off; there are some of the Indians who are poor, and they go and steal the deer; they steal them, that is, they take them underhanded, and use the meat, and that was their food from long ago. Now, he has to steal it while formerly he was free to take it, and if any of them are caught while they are hunting, they are put in jail. If the Indian who is caught has any money, he pays his fine, and if he has not he stays in jail. When he has not the money to pay his fine, well, he stays in jail. For that reason now, I am here before these gentlemen to get for us our food or to keep our food, the deer and the fowl. That is one thing that the Indians want.

Then, as to the salmon. The Indians used to cure the salmon for their food. When the salmon came the river was full of them and so the Indians cured their salmon, because they knew how to go about it. If they have sufficient salmon, they cured them to last until the next run of the salmon came again. If they have not sufficient salmon, they have to go hungry. Now, the white people told the Indians not to kill any more salmon, because they said, "You are killing off all the salmon." Now, they have made a law concerning the

salmon. But the chief says the salmon do not come back after spawning, they die anyway.

By Hon. Mr. Stevens:

Q. Does he mean that he wants to get the salmon when they go up the stream to spawn?—A. The chief says that the salmon die off, and still, the white people are putting laws on for the Indians not kill any salmon. The Indians want to kill the salmon in their own times. When they used to dry salmon in the old times, there was no law against it, and that is what the Indians want to do. They want to have their former ways of living, about the salmon, and they want to have the use again of their food, that is, the deer; and the Indians want to have some grazing lands. Now, the country of the Caribou Indians, is not a very good country. It is not good for crops. It is just good for trapping and from that the Indians make their living. Now, where the Indians used to trap the land has all been taken by the white people, and those Indians over there want to get back their land where they used to trap.

And the chief says, now, I leave my case before the Committee here for them to decide, but before I conclude I want to speak concerning the Indian agents. Long ago, the man who was called Dr. Powell came over and saw his chief's father, Chillihitza. Dr. Powell said: "I am going to tell you that the Queen said that all of the Indian reserves are going to have agents." So the Indians asked him what the agents were going to do. He said that the agents were going to look after them, and if anything is going to happen to the Indians, the agent is there to defend the Indians. So the Indians said they accepted the agent, as he was going to look after their welfare and help them in everything. And at that time the agent looked after the Indians so well that they believed in what the Queen told them to do. But now, the present agents are not acting as the other agents used to act towards the Indians. The agents now do not come and talk with the chiefs before they do anything. They just go with the half-breeds, and take what the half-breeds say. That is, they speak with the half-breeds, and they do not talk with the Indians, and now when the agent wants to do anything, he takes bad people, both men and women. The chief says now that you ought to know that wherever a half-breed is, there is always something bad coming from him; and if there are more than one, they have made bad friends with the other Indians. The half-breeds come and tell the Indians, "I am going to write down my name with you people," and now there are many half-breeds in the reserves. The Indians have consented to that. Then, if a chief is going to have a conference with the Indians, they call a meeting, the half-breeds will not go over there and mix with the Indians. The half-breed says, "I am not an Indian to be going to these meetings, I am a white man." The Indians are satisfied to have the agents, but if there is an agent to be made, the Indians want to have the right to state about which one they would like to have for their agent. We do not want the white people themselves to select our agent, if that agent is not of good-will towards the Indians. He has said to Commissioner Sproat, and to George Reilly and Dr. Powell, that the Indians have chiefs, and they have policemen on their reserves, and they do not want the white policemen to come and arrest the Indians from their reserves, unless they ask the consent of their chief, and the chief says "all right," then they have the right to take a man out of the reserve and to arrest him. Mr. Powell told the Indians that they would have that right, but in disregard of what Mr. Powell has said, Indians are still getting arrested from their reserves. The white people just come and arrest any of the Indians, without asking the consent of the chief. Now, when he was over in London, they told him to come here to Ottawa, and his case would be settled. The chief says: "I did not have the pleasure of seeing the King," but Mr. Hume, who is one of the authorities under

the King, was the one who was speaking to him when he was in London. And Mr. Hume told the chief that there was an election at the time when he was over in London, and he says, if it is not his Honour, Mackenzie King who is going to be Premier in Ottawa, you could put your case before another Premier. So the chief says, "I was told to come and settle my case here in Ottawa, and if I am not satisfied with anything, then I may go over again and have another talk with the Government." And Mr. Hume told them to settle their case here, and this is to be always their court. Long ago, there used to be a village for the Indians at Mara lake and the Indians put in potatoes, and got everything they needed out of the ground. They made a ditch to their gardens; but the Indians were driven away from that reserve by the white people; they would not give it to them, but the white people said it was their lands, and so they drove the Indians from their village, and white people are using lands that the Indians made long ago. Now the Indians are living in very bad shape, they have no water, not anything, and the Indians want to take back that land that is taken away from them by the white people, because it is their land. There is a white man that is living in the reserve that the Indians do not want. The Indians do not want that white man to be living in the reserve. That is on the Squilax Reserve.

By Hon. Mr. Stevens:

Q. What is that white man doing there; is he on the C.P.R. tracks?—A. He is staying inside of the reserve.

Q. But is he working for the C.P.R.; is he one of the C.P.R. trackmen?—A. He made a store in there.

Q. He has got a store?—A. Yes.

Q. Is he down on the lakeshore?—A. No.

Q. Up on the hill?—A. He is quite a ways from the lake, but it is inside the reserve.

Q. Did you tell Mr. Ditchburn?—A. I do not know whether Mr. Ditchburn is acquainted with it.

Q. You ought to tell him; that is something that ought to be told Mr. Ditchburn.—A. (No audible answer.)

The CHAIRMAN: The Committee appreciates the statement you have made to them and will take these matters into consideration.

The WITNESS: I am finished with my statement and I leave this to the Committee to decide upon me. I forgot to tell you about Jimmie Teit.

By Hon. Mr. Murphy:

Q. What do you want to say?—A. It is a little long and I think the gentlemen are tired.

By Mr. McPherson:

Q. Who is Jimmie Teit?—A. He used to be interpreter for English.

Hon. Mr. STEVENS: Is that the one you were speaking of, Mr. Kelly?

Mr. KELLY: Yes. He is dead now.

By Hon. Mr. Stevens:

Q. We have got right here something signed by Jimmie Teit.—A. I went over to see him at the time he was sick and he told me before he died—

Mr. MACINTYRE: Chief Basil David would like to address the Committee.

Witness retired.

CHIEF BASIL DAVID called and sworn.

(The evidence of this witness was given in the Cariboo language, and was translated into English and vice versa, by William Pierrish, sworn interpreter.)

The WITNESS: I do not want to be very long, but I have just a few words. My Indians throughout Cariboo, they are all short of irrigation waters and they are short of grazing range. I want some water for them and I want some grazing range for them. Farther to the north they live just on trapping and fishing and hunting; I want some hunting for them and trap exploring lines. Another word I want to say; some of my boys went in the War and I want my case to be settled before the Committee here and the Government will hear what I say. Some of my children are lying in France and some of them come back wounded. I want to satisfy them. At the time of the War I used to collect some money to help Red Cross. All my returned soldier boys, some are wounded badly. I wish we had something to satisfy them. We are all glad to see the War is over and everything settled but I want to satisfy these boys. I am glad to say this and the Government will hear this. That is all I want to say.

Hon. Mr. MCLENNAN: How many soldiers were there from your Tribe?

Mr. PIERRISH: From my Tribe about twelve, I think.

Hon. Mr. STEVENS: Did you lose your arm over there?

Mr. PIERRISH: Yes, I lost my arm over there.

Hon. Mr. STEVENS: Are you from the same band as the Chief?

Mr. PIERRISH: I am from the Shuswap Tribe.

Hon. Mr. STEVENS: And the Chief is from the Cariboo Tribe?

Mr. PIERRISH: Yes.

Hon. Mr. STEVENS: Whereabouts does he live?

Mr. PIERRISH: Bonaparte.

Mr. O'MEARA: We wish to ask some questions.

Hon. Mr. STEVENS: We do not want to get into a wrangle between Mr. O'Meara's group and these others, if it is some personal fight.

Mr. KELLY: We do not want to get into a wrangle, but I do not like to have our group referred to as Mr. O'Meara's group, and somebody else's group. We do not belong to Mr. O'Meara. We have engaged Mr. O'Meara as legal adviser, and, as I said to the Minister of the Interior in Vancouver, I think in the year 1922, he agitates just insofar as we allow him to agitate, just as any legal adviser. We take exception to that sort of statement very much, that we belong to Mr. O'Meara or are Mr. O'Meara's children. I, for one, do not wish to say anything to the Chief who was the last speaker, or to the other Chief. They have made their statement and that is all there is to it.

Hon. Mr. STEVENS: There was no offense meant when I said that. What I mean is this; we have two groups of Indians here and it is quite clear that there is some feeling between the two, and we do not want to listen to a wrangle between two groups of persons. That is my objection, Mr. Chairman, and I think it is pertinent.

The Witness retired.

The Committee adjourned at 1.00 p.m. until 3.30 p.m.

The Committee resumed at 3.30 p.m., the Hon. Mr. Bostock, Chairman, presiding.

The CHAIRMAN: Are we ready to hear Mr. Kelly?

SEVERAL MEMBERS: Yes.

REV. PETER R. KELLY called and sworn.

The CHAIRMAN: Mr. Kelly, I understand you are the chairman of the Allied Indian Tribes of British Columbia. Will you proceed with your statement?

The WITNESS: Mr. Chairman, and hon. gentlemen: I feel just a little at a loss to commence, in view of several things which have transpired here since

my arrival. I want to say this, speaking on behalf of the Indians of British Columbia, that this, I take it, is the culmination of about fifty years of endeavour on the part of the Indian tribes of British Columbia to obtain a hearing. I say this to bring before you the importance of the effort made by the Indian tribes of British Columbia.

Long before my time—long before I saw the light of day—the Indian tribes sent delegations to Victoria and also to Ottawa to bring before them their grievances. During the last eleven years—ten years ago last June—the Indians were organized in a more definite way to press their claims so that the "powers that be" would listen to them in the manner to which they felt they were entitled, and as a result, we have been here several times, sometimes coming without the invitation of the government, and at other times with the invitation of the government, to present our views to the government, and the government has taken steps on different occasions to listen to us, but nothing has resulted from that. We have submitted our claims to the government, I think, in a very full way. The Deputy Superintendent General of Indian Affairs, who is well acquainted with this whole situation, knows just what we have done, and I am glad he has included in his evidence and presented the things we have brought before the government at different times.

Now then, there are two groups of things which must be considered; one is the Indian grievances, and I suppose it was to overcome one phase of the Indian grievances that a Royal Commission was appointed in the year 1913. But that Commission looked into just one thing, only one phase of Indian grievances, and that was to provide Indians with adequate lands. The Indians were visited and were asked to present their views, which they did. That Commission laboured for nearly four years and then made its report, but the Commission dealt with only one thing, and one thing only, which they reiterated again and again, that they had no right at all to touch on any other grievances excepting the adequate area of lands for Indians. Only that was dealt with. Connected with that, as was shown this morning by the different witnesses brought before your committee, there were many other grievances, and these grievances need to be righted. Now, the other side is this: at the bottom of all that is a fundamental issue—a fundamental issue. That is to say, the Indians of British Columbia were not treated as Indian tribes in other provinces of this Dominion, not because it was not known at all, but after some endeavour on the part of the Colonial government in the early days, which government strove to deal with this great fundamental issue, and I frankly refer to the aboriginal title of Indians.

When British Columbia was organized as a province, the British Columbia government knew all about it, talked about it, discussed the whole thing, but because it was a disagreeable sort of thing, it was dropped. It was introduced into the House of Commons shortly after British Columbia entered Confederation. When the British Columbia Lands Act was introduced, it was disallowed, on the advice of the Minister of Justice, because it ignored that great fundamental principle as having obtained in British Columbia. It was ignored, as you hon. gentlemen know. That thing has not been righted to this day.

Hon. Mr. BARNARD: Just one moment; when the Land Act as it subsequently came into effect in British Columbia, was passed, was this question of disallowance discussed again?

The WITNESS: No, it was passed at the following session of Parliament.

Hon. Mr. BARNARD: The same Act?

The WITNESS: Yes, the same Act.

By Hon. Mr. Stevens:

Q. Just one other question, while you are interrupted; you say it was disallowed on that fundamental principle? Would you mind elucidating that,

Mr. Kelly?—A. I mean this, it was because the British Columbia government acted as though there was no other interest in the Crown lands of British Columbia.

By Hon. Mr. McLennan:

Q. Than their own?—A. Than their own—that is, the province.

Hon. Mr. STEVENS: I would like, Mr. Chairman, to get that point cleared up, because I think it is important.

By Hon. Mr. Stevens:

Q. Was not the argument for disallowance based upon this: that the Land Act of British Columbia—that was the subject of disallowance—was in contravention of the trust features of Section 109 of the British North America Act?—A. I do not just understand your question.

Q. You referred, I think, to the Honourable Mr. Fournier, Minister of Justice. Here is a clause I notice in reference to that:—

> The undersigned would also refer to the British North America Act, 1867, Section 109, applicable to British Columbia, which enacts in effect that all land belonging to the province shall belong to the province, "subject to any trust existing in respect thereof, and to any interest other than that of the province in the same."

Now, is not that the real point of conflict upon which the Minister of Justice founded the disallowance?—A. Exactly; that is the point I am trying to make. It was in view of that, that it was disallowed. At that time, it was recognized that the Indians had not ceded their aboriginal title, and since that day, it has not been done.

By Hon. Mr. Barnard:

Q. Can you tell me what caused the Dominion Government to change its attitude the next year?—A. I am not prepared to say. I cannot say just why it was done.

Q. Evidently their previous attitude was abandoned within 12 months?—A. I think it was abandoned—if you will allow me to pass my opinion, it is the only thing I have now—it was abandoned because it was likely to disrupt Confederation. That is the only thing I can say.

By the Chairman:

Q. Have you anything upon which to base that opinion?—A. I have not anything to back that up right now. Now, if I may proceed; it is because of that, and in a very authoritative way, when, on behalf of the Government, the Deputy Superintendent General of Indian Affairs issued a memorandum recently, I think, in 1924, conceding that the Indian title had never been extinguished. But the point made was this: that there were other interests than the Indian interests at stake, therefore, being the minor interest, it should not be taken too seriously. I think that was the purport of that argument; and on that ground, that memorandum proceeded, that the Indians were receiving as much as Treaty Indians were receiving in the way of their education grants, and other benefits coming to Indians all over this country.

Now then, your honourable Committee, Mr. Chairman, seem to press for one thing. At least, if I am in the wrong, I would like to be corrected, but my impression has been this: you want us to bring before you grievances. If we have any grievances to be righted, you say let us have it, and we will right those grievances, or recommend the righting of them.

By Mr. McPherson:

Q. If possible?—A. Yes, in so far as they can be righted. I grant that. But let us say for the sake of argument that this Committee recommends a certain

thing to Parliament, and Parliament passes a bill, and all the grievances are made right at one blow as it were; there would still remain this fundamental issue. I contend that there would still remain this fundamental issue, and I was highly pleased when the Minister in reply to my wire advised me of the fact that a Committee of Parliament had been appointed to look into this matter. Now, since that has been done, I beg of this Committee to be a little more tolerant in supporting our petition, which was lodged with Parliament last year. We realize that this is the one privilege for which we have been pressing for the last fifty or sixty years; and I also realize that at the present time—I might say the dying moments of Parliament—I notice that Parliament is trying to finish business by the 14th of this month, and I know you are rushing things through —but in view of the fact that the rightful dealing of this question affects the future of 23,000 Indians who are not represented in Parliament, who have no voice in the affairs of this land, except through the Indian Department, I beg of you to be a little more tolerant, and if we are to have a constitutional argument to present, I think it is only fair that this Committee should hear it, and let us have it on record. Now, I know that by saying these things, I may raise several vexatious points, and that some such thing as a shadow of doubt may be cast upon our general counsel. I would like to say this; would you kindly forget any disagreeable features which may have arisen in the past, and give us the same right and the same privilege as would be extended to any other body of people, coming with their grievances, to present our constitutional argument in a connected way, so that it will appear before you in a connected form; because you would have to consider that in any case.

I notice that your Committee asked to have documents presented. Well, let me say that if we did nothing more than simply present documents this afternoon, and say to you gentlemen, "now we have finished, we have nothing more to do," you would still have the task of analysing those documents in camera. In view of that, I think it is only fair that we should be allowed to present our constitutional argument in a connected way, and then we will have done with it.

Now, that is the position I take here this afternoon. I may continue, and discuss several features of this, but just in support of what I may say, I wanted to read a passage or two which might bring before your honourable body the importance of this, if you have not been seized of it before. I read from Law Reports Appeal Cases 14.—1889, at page 55:—

> There was a great deal of learned discussion at the Bar with respect to the precise quality of the Indian rights, but their lordships do not consider it necessary to express any opinion upon that point.

By Hon. Mr. Stevens:

Q. What is the case you are citing?—A. It is the St. Catherine's Milling Case. Now, that is one quotation. Later on in the same case, we have this passage:—

> The fact that the power of legislating for Indians and for lands which were reserved to their use has been entrusted to the Parliament of the Dominion, is not in the least degree inconsistent with the rights of the provinces to a beneficial interest in these lands, available to them as a source of revenue whenever the estate of the Crown is disincumbered of the Indian title.

So, in view of that, this is the issue:

Q. But, Mr. Kelly, surely you observe that that refers to lands reserved for the use of the Indians. It does not refer to the general lands of the province at all; it refers to lands reserved for the use of the Indians?—A. I contend that if it refers to lands reserved for the use of the Indians, it refers in a ten

thousandfold higher degree to lands not reserved for the use of the Indians, but to which their aboriginal title has never been extinguished. That is the point I wish to make.

Q. All right; go on. I was just calling your attention to that?—A. And in view of that I plead for tolerance once again, that you allow our general counsel to present in a connected way our constitutional case. It may take some little time, but once again let me say we have been labouring for this for the last fifty years, and surely the Committee will be tolerant enough to allow us if need be, three or four additional hours to present that important feature of the argument which is necessary.

By Mr. McPherson:

Q. Mr. Kelly, I am a new member on this Committee. I was under the impression that that had been submitted to the House before by Mr. O'Meara in an address at some length, some years ago. Is that not correct?—A. I do not think so.

By Hon. Mr. Murphy:

Q. Are you quite sure of that, of your own knowledge?—A. I do not think it was just that kind of an argument.

Dr. SCOTT: I think, Mr. Chairman, it was presented in 1923, in Victoria. I asked, that instead of having a speech on the subject, we should have a memorandum on the constitutional question, and I think that was submitted and incorporated in the evidence at that time. If that is available now—

WITNESS: I would like to say, Mr. Chairman, in reply to the Deputy Superintendent General's correction, that that is quite true. But I would like also to say that I do not think the presentation of the case at that time was quite adequate. I think we have additional information to add to that, which should be embodied in that, and brought before this Committee. I contend, gentlemen, that every information that can strengthen our position, we are entitled to present before this Committee.

By the Chairman:

Q. Yes, Mr. Kelly, we want to get all the information we can; but in order to save the time of the Committee, could you not put in your argument that was made at that time, and now add to it what you want to add?—A. I beg pardon, Mr. Chairman; I did not quite hear that.

Q. Could you not put in that presentation of the case that was given to Dr. Scott in 1923; could you not put that in now, and then add to it what you want to add?—A. Yes, that can be done; we can put that in; we have that in writing here. But in addition to that, I still maintain that our general counsel should be given the privilege of presenting in a connected form, the arguments supporting our stand.

The CHAIRMAN: That is a matter for the Committee to consider, after we have heard all the evidence that you wish to place before us.

Hon. Mr. STEVENS: I would like to say this, Mr. Kelly, that I am certain that the Committee would very much like to hear whatever evidence you have to offer now. I think the Committee will agree with me when I say that the evidence we have received from Mr. Paull and from others, has helped us a great deal more than the attempted evidence we had the other day, or the attempted argument, and I think you will advance your case a great deal if you will give us, out of your experience, your evidence now.

WITNESS: Well, one's own experience, is after all, a very limited thing on which to advance an argument.

Hon. Mr. STEVENS: I mean your experience, and your knowledge of the case, obtained as Chairman of your Executive Committee.

Mr. HAY: And your own knowledge of the conditions, perhaps.

Hon. Mr. MCLENNAN: As I see the case, Mr. Kelly, the Committee will be very grateful for any presentation of facts which might modify their judgment, and to which we will give full weight, rather than a constitutional argument on deductions from I know not what. I think we all felt very grateful the other day to Mr. Paull when he told us about Governor Douglas, and we will be grateful for any similar things. If you can show us facts of that kind, or the absence of any dealings with the Indians through the old Colonial government, all that would help the Committee, whereas an argument will not help it.

WITNESS: I see, and I am just a little nonplused when that phase of the question is brought forward. I thought an argument would be the necessary thing, and would be the most important thing. Perhaps I should say, not exactly an argument, but rather the presentation of the evidence in a connected way, on the constitutional issue, which would show that the Indian title has always been recognized, and has never been extinguished.

Hon. Mr. STEVENS: Mr. Kelly, we tried the other morning to get evidence, and we could not get any.

WITNESS: I am prepared to say that you will get it now.

Hon. Mr. STEVENS: Mr. O'Meara took the ground that he was counsel and not here to give evidence at all.

WITNESS: Well, whether counsel or not, I think the counsel is here to present the constitutional points in support of the position of his clients, and that is the right that we ask.

Mr. MCPHERSON: Mr. Kelly, are you basing your case really on past statements made, and reports made, either by Government officials, or representatives of the Crown, in one form or another. Is that where you expect to get your constitutional evidence, or the evidence that will support a constitutional argument?

WITNESS: No.

By Mr. McPherson:

Q. It is in the state papers of all kinds that are before us?—A. Yes, in the State papers that came into existence, bearing on the subject, and the decisions that have been made on similar points in other cases, both in Canada and elsewhere. That is what we depend upon, and I think if you will pardon a layman speaking in this way, that that is the procedure of law, is it not?

Q. I must say, as far as the case you have cited goes, I think I would quote it against you; that is, the reasons for the whole judgment?—A. Then, that is our loss, if that is the view taken of it.

Mr. MCPHERSON: That is only my personal view. I have been reading the case.

Hon. Mr. STEVENS: I think the case as cited a moment ago would go against you.

WITNESS: Well I would be sorry to think a court would take that view.

Mr. MCPHERSON: They might not.

WITNESS: However, the point I would like to make is this. I am not going to labour anything because of this. The grievances we have set out in a rather full way in 1919, embodied in a pamphlet which was submitted to the Government of the province of British Columbia, have been included by Dr. Scott in his statement.

Hon. Mr. STEVENS: We have that here in his documents.

WITNESS: Yes. Now, I do not know what this Committee is prepared to do about that, but I realize that a Committee like this cannot very well deal

with it in a detailed way. You may make a general recommendation, and that is about as far as anybody can go; but there would still remain the determination of the form of machinery or the effective way of dealing with those different grievances that have been brought before you. The question has become acute, because of conditions that have arisen of late years. In the early days, that is, prior to Confederation, and during the earlier time of Confederation, although the question was quite pronounced all along, even after the date of the entrance of British Columbia into Confederation, it has become more and more acute. I think it was in 1887 that a large delegation came down from Fort Simpson to interview the Provincial government in Victoria. At that time they brought before the Government this fact, that they were not adequately provided for as far as land was concerned, and they became conscious of the fact that in days to come rights which they had inherited from time immemorial would be taken away from them. Even at that early date, forty years ago, they were conscious of that, and it was brought to the notice of the Provincial government. About that time, when Reserve Commissioners went around and approached the Haida Tribe of the Queen Charlotte Islands, I heard this from the lips of those who were present asking them to state a certain area of land to be set apart for them with which they would be satisfied. The Chiefs who gathered in council together said this, "Why would we ask you to set lands apart for us. This territory is ours and it has been ours as far back as we can remember. Any time any other people claimed our lands we disputed their claim with force. Why are you coming here and asking us to say what area of land would satisfy us?" The Commissioners were treated courteously; they were always on the best of terms with those Commissioners. They told the Commissioners that they were not prepared to name any area because the whole area of land was theirs.

By the Chairman:

Q. What commission was that?—A. I am not prepared to name any particular Commissioners, but it was the Reserve Commissioners who went around.

Q. That was one that was appointed in 1875 or 1876?—A. I would think about that time. That was their view. Gradually they have been hemmed in little by little until the things which they had enjoyed in the past have been taken away from them. I know it is the viewpoint taken here by some members of this Committee that because of the encroachment of civilization it is necessary to regulate things. We grant all that. I do not think anything should be allowed to go on without a certain amount of regulation. Nevertheless, we must recognize this also, that the people that you have been regulating things for are not up to your standard. These people were not in contact with civilization more than seventy-five years ago. I grant that on this eastern coast of the North American Continent the Indians have been in contact with civilization longer than we have been on the coast. You would ask those people to subscribe to the same regulations as you have made for yourself, and ask them to make a living under those conditions. I contend, gentlemen, that it is becoming harder and harder for them to come under that restraining hand and at the same time not being adequately brought forward to take their place among the body politic of this land.

By Mr. Hay:

Q. Does that apply to the younger generation as well as the older?—A. Generally, yes; there are a few exceptions always, but that applies to all the Indians. I stressed this to the present Minister of the Interior, and also the Deputy Superintendent General of Indian Affairs, when they came to visit us on the coast. It was in view of that that we stressed that the Indians should receive intensive training conditions making it necessary that if it is not done the time will soon come when they will lose out in the race for existence.

Another point I would like to raise, is this: I would like to say, whether this Committee sees fit to recommend to Parliament that the aboriginal title of the Indians of British Columbia is not a good one and cannot be supported, and recommends to Parliament that it be set aside and not considered at all, the fact remains that you have not treated us as you should have treated us in the days gone by. That is the great issue. In 1871, when British Columbia entered Confederation, if treaties had been made with the Indian Tribes of British Columbia, as was done elsewhere, we would have received certain benefits from that date, and we have not received those benefits. There was brought against our claims a computation of what annuities of five dollars per capita would come to, something over $2,500,000, in the course of twenty years. I contend that if the country can get off with $2,500,000, I think they would be getting off rather lightly, in view of the fact that the Indian Tribes who are receiving annuities continually, and will receive them until the last Indian dies or is enfranchised, they are receiving many times more than $2,500,000. In the course of time it will amount to a huge sum of money, and yet it has been brought forward as an argument to hinder the fair consideration of the case insofar as our claim is concerned.

By Mr. McPherson:

Q. You do not expect, of course, that title will be given to the Indians of British Columbia?—A. Oh, no.

Q. You expect further consideration, though?—A. Consideration and benefits.

Q. What amount do you think is right?—A. I could not say that; I do not think that is a fair question.

Q. I wondered whether you had arrived at an amount?—A. No, I have not. I think even the Privy Council has refrained from stating any amount, and I am not presuming to be a greater authority than that wonderful body.

Q. You are the man that is asking for value received?—A. Yes, I think it could be worked out.

Q. It is up to you to put your price on it?—A. Yes. I see your point, but this procedure has been followed in the past and I think we have documentary evidence in support of that to satisfy any claims of the Indians along those lines. The Imperial Government, before the days of Confederation, followed the procedure of negotiating with the Indian Tribes; met the Tribes in Council and negotiated with them. The negotiations with them perhaps was just a formal procedure. What was said by the Deputy Superintendent of Indian Affairs may be true when he said something to the effect that treaties were already prepared and were simply submitted to the Indian Tribes. That may be quite true; I cannot dispute that. Nevertheless, they went through the formality of negotiating with those Indian Chiefs who were responsible and who represented their Tribes.

By Hon. Mr. Stevens:

Q. Your real desire is to receive official acknowledgment of the aboriginal title; that is your point?—A. Yes.

By Mr. McPherson:

Q. Which title would be in the province of British Columbia and not in the Dominion of Canada?—A. Quite true.

Q. How can we do that?—A. Well, I think that is for you to decide, not for me. There seems to me, under the terms of union when British Columbia entered Confederation, there were certain things agreed to. Among those is article 13, which was quoted by Premier Oliver in his telegram to Hon. Charles Stewart the other day, that after British Columbia gives an adequate area of

land to the needs of the Indians it seemed to him that Canada becomes responsible for satisfying the claims of the Indians.

Q. There is just the point. You say they have not given that?—A. We tried to get adequate lands and we have not been successful.

By Hon. Mr. Stevens:

Q. Mr. Paull read this morning, and also on Thursday, extracts from the petitions or reports indicating that certain areas were inadequate 30, 40 or 50 years ago?—A. Yes.

Q. Well, it is quite clear that since that time, not only in 1912 but prior to 1912, very substantial additions were made which apparently satisfied the claims raised at that period?—A. (No audible answer.)

By Mr. Hay:

Q. Mr. Stevens worked it out on the basis that what was originally 20 acres is now 127 acres?—A. I think that needs explanation.

By Hon. Mr. Stevens:

Q. I am not talking about whether that is adequate now or not. The point is; the Indians raised this very question of inadequacy of land, say, 50 years ago—I think there was one in 1874, which would be 52 years ago—and the basis then was 20 acres. There is ample evidence to show that that amount has been augmented very considerably since then, indicating that the Government did respond to the request of the Indians and apparently satisfied them, because there was very little heard of it again for a long time. In 1912 a settlement of the same question was attempted again. You will admit that, will you not? —A. I do admit it.

Q. We come to this situation; you want either one of two things; either the claim to aboriginal title or the claim for further consideration of the amount of land set aside in the reserve?—A. Well, this is what we did. We criticized the report of the Royal Commissions of 1913 and 1916. In view of our criticism, the present Minister of the Interior, when he came to British Columbia in the year 1922, agreed that we should be privileged to supply the Commission with additional claims for land. We did that, and I think of all the claims that were submitted at that time, not one has been acceded to. Three of us went out to interview the Indian Tribes and they asked for certain things. Those claims were filed with the Commission as additional claims of the Indians, as far as lands were concerned, and as far as I am aware I do not think a single claim was acceded to. I just want to point that out.

Q. That was subsequent to the filing of their report?—A. Yes, but before the report was accepted.

Q. But it was subsequent to the filing of the report by the Commission? —A. Yes. That is the position to-day; there is not any more land available. Now, we talk about lands, because it is one of the basic things of one's living. We admit that conditions are different in British Columbia. I think in that province we have all the living conditions that are found all over the Dominion. It is true that we are not dependent entirely upon lands for our living; we are not agricultural people entirely. Certain portions of the province are dependent upon their land for a living, such as the interior, the Fraser Valley, and other stretches of land that are fertile, but the fact is this; in other parts of the Dominion, say in the provinces of Saskatchewan and Alberta, the Indians are provided with adequate lands to ensure their living for all time to come.

By Hon. Mr. Murphy:

Q. Do you know how much land per head the Indians have in Saskatchewan?—A. I am not just prepared to say; I think the figures are available.

Mr. O'Meara: About nine times as much.

The WITNESS: I think Dr. Scott has it.

Dr. SCOTT: A square mile represents five; 640 acres for a family of five.

The WITNESS: And that is land which is capable of producing things, where we have great heaps of mountains in our lands, which were quoted as 107 acres, I think.

Hon. Mr. STEVENS: 132 acres.

The WITNESS: 132 acres for each family. You must realize that the greater portion of that is composed of rocky land.

By Hon. Mr. Stevens:

Q. Take for instance all through the lower Fraser Valley, anywhere on the coast; you would not require 132 acres for a family?—A. Yes.

Q. I do not recall of one Indian on the Fraser Valley cultivating more than a very few acres, and the very great bulk of them will cultivate nothing at all? —A. Quite so.

Q. Although they have the land there?—A. Quite so. That is not to be wondered at, Mr. Chairman; I think you know the reason why. They have not been agricultural people until just within the past few decades. Conditions have forced them to change and conditions will force them more and more to depend upon their land.

Q. Take that remarkably fertile reserve at Kamloops, where the two Thompson Rivers join. I have been watching that for thirty-five years now, and the Indians never use that land?—A. Well, as a matter of fact, Mr. Stevens, you cannot grow a blade of grass on that unless you bring water on that land, that Kamloops Reserve.

Q. Right beside it is some of the most productive land on the whole continent, and white men have gone on there and are growing the most magnificent fruits, and so on?—A. No doubt about it.

Q. Then come down to Penticton, that very fine reservation about two miles south of Penticton. I have known that for thirty years and it is just lying there. I was down there last year and right in almost to the city boundaries of Penticton there are thousands of acres of land highly developed, and on this reservation there is nothing done. I merely draw your attention to this to show that while you criticize the treatment, with all the efforts that have been made the Indians will not cultivate this very valuable, fertile land. After all, there are two sides to this problem?—A. Quite so. I want to be fair; I do not claim anything that we are not entitled to. Take the Kamloops area, for instance—the Chairman has a large area of land there and he knows just as well as I do that you cannot grow a blade of grass unless you have water on that land.

By Hon. Mr. Murphy:

Q. What do you say about this contrast that Mr. Stevens has drawn down at Penticton?—A. Well, as I said before those people have been more interested in stock than in fruit growing. As you know, the Okanagan valley has only become a wonderful fruit growing district within a comparatively short time, and the Indians have not been keeping up to the times. The time is coming—perhaps the time is now—when the Indians will be forced to do what their white brothers are doing.

By Hon. Mr. Stevens:

Q. I think it is just as well to get the other side of this picture. You complain—and justly perhaps—that the provincial government seems to be somewhat unsympathetic. All the witnesses have complained of that. Now, take Penticton, and this area around Summerland, or around Vernon—any of

the districts in the Okanagan—and one of the great problems facing the authorities is the infection of the orchards from the Indian orchards; you cannot get an Indian to look after his orchard. Mr. Ditchburn or any of the officers of the Department will agree that they have great trouble in getting the Indians to clean their orchards up, so there is an infection of the other orchards. That is one reason why the provincial government is not sympathetic. I think the committee should get both sides of the picture.—A. As I said before, I think the Indian needs more intensive training to-day than the white man does.

Q. That is one of your problems, is it not?—A. Yes.

Q. And if that problem were solved, this chimerical demand, that we recognize the right to all underlying land in British Columbia, would fade out of existence?—A. No, I don't think so.

Q. You do not like to let go of that bone—A. No, and you would not like to let go of it either.

By Hon. Mr. McLennan:

Q. Our ancestors have all gone through that at one time or another; they have been conquered.—A. We have not been conquered.

Q. Well, call it peaceful penetration in British Columbia, fortunately.—A. It probably was peaceful penetration.

Hon. Mr. STEVENS: When we talk about their being conquered—

The WITNESS: We were not conquered. We might have been exterminated, if necessary.

Hon. Mr. STEVENS: That touches a sore spot with Mr. Kelly.

Hon. Mr. MCLENNAN: I was simply giving—

The WITNESS: No, it does not.

The CHAIRMAN: He seems to be giving a good demonstration of it here.

The WITNESS: That is a thing of the past; it does not worry me any.

By Hon. Mr. Barnard:

Q. Can you tell me any reserve on the southern portion of Vancouver Island that is cultivated by Indians up to 50 per cent of its capacity?—A. I cannot say offhand. The secretary tells me that the reserve in Duncan county is cultivated up to 50 per cent. I am not going to argue that point out, because I do not think I can; I am not prepared to do so. This is the point I wish to make; gentlemen, if the white people, after hundreds of years of agricultural life, find it necessary to send their brainiest boys to agricultural colleges so they may learn still further how to till the soil, how much more necessary is it for the Indians to learn the primary principles of agriculture?

Hon. Mr. STEVENS: That is sound.

By Hon. Mr. Murphy:

Q. Is that one of your claims?—A. That is one of the claims.

Hon. Mr. STEVENS: That is sound commonsense, and you will have a sympathetic hearing here.

Hon. Mr. MCLENNAN: You have struck a sympathetic chord in all of the committee on that.

The WITNESS: That is one of the things we have asked for. You belittle my contention for our aboriginal title, because when our aboriginal title is established—some people seem to have said in the past that it is very questionable what the Indians will be satisfied with. Once their title is established, perhaps they will wreck the city of Vancouver and drive out all the population—

Hon. Mr. STEVENS: They will have a hard job doing that.

The WITNESS: Ridiculous as it sounds, that has been stressed in certain places, to the detriment of the Indians, because there is not the faintest kind of

a notion in the mind of any intelligent Indian to do that to-day. It is purely an academic thing. We claim the right exists and has never been extinguished, and we ask you to deal with that right as you have dealt with it elsewhere.

By Hon. Mr. Stevens:

Q. Mr. Kelly, let me ask you at this point; you belong to the Haida tribe on Queen Charlotte Island?—A. Yes.

Q. And you remember the Tsimpsians at Fort Simpson?—A. Yes.

Q. I have some recollection from stories told me by old residents up there, and you have no doubt heard your people talk about it—how long has it been since the Haidas came over and fought with the Tsimpsians?—A. I would say about 60 or 70 years.

By Hon. Mr. Murphy:

Q. And if the necessity arose, would they not do it to-day?—A. No, not to-day; we have got beyond that stage.

By Hon. Mr. Stevens:

Q. I have heard them 30 years ago tell about coming over there.—A. Yes.

Q. Now, another question I want to ask you is this; take the tribes along the north shore from Fort Simpson up the Skeena river; they never had quite established possession of their area; they were always subject to invasions by other tribes, were they not?—A. Yes, but not for territorial conquest.

Q. And they never had what might be termed a government of possession of the land?—A. Oh yes, they had.

Q. Where were the boundaries of the Tsimpsian Indians?—A. They have very well defined boundaries; I am not prepared to state where their boundaries are. I can tell you better where the boundaries of the Haida Indians are, because I know considerably more about that.

Q. You take in all of Graham Island pretty well?—A. Yes, we take in Graham Island. You know, there are clans and tribes of the Haida nation.

Q. Where were your headquarters?—A. At Skedigate Inlet.

Q. Was there a government established there?—A. Yes.

Q. Did that government administer the island?—A. Yes; it was not a central government, a large central government such as you have, for instance, in a provincial government; it was more of a municipal government. Our government was something like the city state of the Greeks of long ago. There was no large central government, but there was a municipal government.

By Hon. Mr. McLennan:

Q. Each grove had a government of its own?—A. Yes.

Q. And the groves came together for certain purposes of their own?—A. Yes.

Q. But normally it was, as you say, like a Greek city?—A. Yes.

By the Chairman:

Q. And the Haidas had control over Graham Island?—A. The whole of Queen Charlotte Island, Graham Island, and Normsby Island.

By Hon. Mr. Stevens:

Q. And you used to go to the coast very frequently?—A. Yes.

Q. And it was a constant war—or shall we say "strife"—between the coast tribes and the Haidas?—A. Yes, it was for gain; not for territorial conquest. They did not want the land of the Tsimpsians because it was no good to them; it was across the water.

By Hon. Mr. McLennan:

Q. They made raids there?—A. Yes, they made raids; the Indians used to deal in slaves, and they would make a raid and carry off so many slaves, and slaves represented property, and, therefore, these wars continued.

Q. The early Greeks again?—A. Yes. The benefits I have been stressing —one of them is agricultural training, and the present Minister of the Interior and Doctor Scott will bear me out that I stressed this very thing in my address before the committee in Victoria; that is, that we should have such intensive training for the Indians as would enable them to earn a decent living among the civilized people of to-day. That was my big point, and I still stress that point.

By Mr. McPherson:

Q. Do the Indians as a whole—the young people—want that, or is that merely because you know better what they should have?—A. I am not prepared to say the greater majority—yes, I think so; I think the majority of the young Indians want that, and feel the necessity for it to-day.

Q. You will remember the elderly chief who spoke to us only pleaded for one thing, and that was to let them be Indians?—A. With all due respect to that veteran chief—and we all respect him—I do not think he realizes what he is saying; we have always taken that view.

By Hon. Mr. Stevens:

Q. I notice there has been spent on education in British Columbia a considerable amount. I will go back but a few years and give the figures, and then I want to ask you a question on them. In 1920-21 there was spent $318,000; 1921-1922, $478,000; 1922-1923, $354,000; 1923-1924, $492,000; 1924-1925, $422,000; and 1925-26, $381,000.

Hon. Mr. MURPHY: What are those figures?

Hon. Mr. STEVENS: Figures of amounts spent on the education of the Indians in British Columbia by the Dominion government.

By Hon. Mr. Stevens:

Q. Now, these figures will compare very favourably with the amount spent on the education of the white children by the provincial government, will they not, in your estimation?—A. I think so, because I think a certain part represents capital expenditures; that is to say, putting up permanent buildings.

Q. Very likely.—A. Buildings to the cost of perhaps $200,000.

Q. That is quite possible, but take it all through since Confederation, there has been spent $5,500,000, some of it in capital expenditures, no doubt. Now, take these aids to agriculture; they are not very large sums; they only amount to $6,000 or $8,000 a year, which is very small. But what I am trying to impress on your mind, or get you to admit, is that these figures compare very favourably with what has been spent for education of the white population, so that if you could tell us where the complaint is—you must admit we cannot spend too fabulous a sum, this seems very generous.—A. I would like to say this, and I would like to make myself clear on this; I think every progressive Indian is grateful for every cent which has been expended on education. I feel that way, and I say that from the bottom of my heart; it has "made me what I am to-day," and we are grateful for it. But after all, is it not a fact that education is the duty of the State to anybody, not just the Indians?

Q. Yes, nobody is objecting to that; do not misunderstand me. What I am getting at is if this is wrongly directed, we would be glad to have a suggestion as to a more proper direction. The amount seems to me to be fairly reasonable.

Hon. Mr. MURPHY: Fairly generous.

Hon. Mr. STEVENS: If it is not being properly expended, we ought to know it.

By Hon. Mr. McLennan:

Q. In other words, would your view be that a larger proportion should be spent on agricultural education?—A. I do not just say that; I do not say lessen one to increase the other.

Q. But if it is shown that what is being done for education is not being properly done, we should know it, and I think your view is that these amounts, which are quite small—$6,000 or $8,000 per year—should be increased.—A. To $60,000 or $80,000.

Hon. Mr. STEVENS: But these amounts, this $6,000 or $8,000, are separate from education.

Hon. Mr. MCLENNAN: That seems to me to be a very small amount.

Hon. Mr. STEWART: A very small proportion of that $8,000 would be spent on agricultural education; that is more as aids to agriculture.

Hon. Mr. STEVENS: Yes; it says "Aids to agriculture, cleansing orchards, etc., spraying."

Hon. Mr. STEWART: As I understand Mr. Kelly, his idea is that when the public school course, which is practically the same as that given to the children in all the schools, is completed, something might be done supplementarily in the way of agricultural education.

Hon. Mr. STEVENS: That might be worth considering.

The WITNESS: Not only agriculture, but vocational training for Indians. That is what we have been demanding.

Hon. Mr. STEVENS: I think that is very valuable evidence myself.

Hon. Mr. MURPHY: The best we have had.

The WITNESS: Because necessity is forcing the Indians to demand that more and more. While the sums expended on education seem large ones, yet they are not too large at all—

Hon. Mr. STEVENS: We are not suggesting that. I want you to get that out of your mind. If we can increase it, if it is desirable, or properly directed, or if we can direct it in a different way—

Hon. Mr. MCLENNAN: It was said by the old chief there were quite a number of invalids of the war, and as I understood him, they were not getting the consideration he thought they should be getting.

Hon. Mr. MURPHY: I thought he referred rather to some members of his own family.

The WITNESS: Some members of his own band. I am not prepared to speak of that in any definite way—

Hon. Mr. MCLENNAN: Have you noticed any such cases?

The WITNESS: I know there are some cases, but in nearly every case, the returned Indian soldier has been treated the same as any other returned soldier.

By Hon. Mr. Murphy:

Q. That is your opinion on that point?—A. Yes; there is no difference at all; the returned Indian soldier has been treated just as considerately as any other returned soldier. So we have put in the things that we consider to be the necessary basis of settlement. Now that is on record. Before we are entitled to that, we must show that we are entitled to it, and we claim that our aboriginal title gives us the right to claim that, because it has been advanced that we received these things as a matter of grace, not because we were entitled to them, but just because it is the goodwill of the Government and nothing else.

By Mr. McPherson:

Q. And you are putting forward a different proposition?—A. Yes.

Q. And is not that the very reason why you have to arrive at what the value of the land was?—A. Well, give us a negotiating committee, and we will meet you, and I think we can arrive at some valuation of what we are claiming. You have not been able to do that, or at least you have not been willing to do that in the past. We have asked for that, but we have not been able to receive it.

By Hon. Mr. Murphy:

Q. As I understand it, Mr. Kelly, you take the position that what you have received up to the present time has been given as a matter of grace, and not in satisfaction of this aboriginal title?—A. Exactly. It has been so stated officially.

Q. Therefore, if you were to sit down and negotiate now, all that has been given would be wiped out of consideration? The new consideration would be an amount over and above all that you have already received?—A. Something like that. We would not forget what has been received.

Q. Would you take it into account though?—A. That is a matter of negotiation, I would say.

By Hon. Mr. Barnard:

Q. Would you suggest, Mr. Kelly, that the basis of negotiation should be on the values as they were, at the time of occupation, or the present day values? —A. We have two extreme views on that of course. I might say that the Indian department has officially stated that progress means nothing at all to the value of the aboriginal title.

By the Chairman:

Q. Do you dispute that?—A. Yes, somewhat, we do. And once again I say that is a matter of negotiation, and if it cannot be negotiated, it is because of that that we thought the court decision would be a remedy. Then we would either gain our point, or we would lose out on it. That was the point, and that was the reason why we have pressed for a judicial decision of the matter. We realized the complications of it. Just as the Minister of the Interior said in Vancouver, it is a tremendously complicated affair; we realize that, and we cannot say that this matter can be settled by a mere wave of the hand.

By Hon. Mr. Stevens:

Q. Supposing the aboriginal title is not recognized. Suppose recognition is refused, what position do you take then?—A. Then the position that we would have to take would be this: that we are simply dependent people. Then we would have to accept from you, just as an act of grace, whatever you saw fit to give us. Now that is putting it in plain language. The Indians have no voice in the affairs of this country. They have not a solitary way of bringing anything before the Parliament of this country, except as we have done last year by petition, and it is a mighty hard thing. If we press for that, we are called agitators, simply agitators, trouble makers, when we try to get what we consider to be our rights. It is a mighty hard thing, and as I have said, it has taken us between forty and fifty years to get to where we are to-day. And, perhaps, if we are turned down now, if this Committee see fit to turn down what we are pressing for, it might be another century before a new generation will rise up and begin to press this claim. If this question is not settled, in a proper way on a sound basis, it will not be settled properly. Now, that is the point that we want to stress. I said to the Hon. Mr. Stevens last year, when he was Acting Minister of the Interior,—I think these are the words I used: "Why not keep unblemished the record of British fair dealing with native races? Why refuse to recognize the claim of certain tribes of Indians in one corner of the British Dominions, when it has been accorded to others in another part of the same Dominion."

Hon. Mr. STEVENS: That, I think, is not quite a fair way of putting it, Mr. Kelly. As I have already told you—

WITNESS: At that time, I think you agreed with me.

Hon. Mr. STEVENS: No, that is one thing I never did agree to in the last twenty years, or the nineteen years since I heard Mr. O'Meara first moot this claim for an aboriginal title. I never admitted it, and I never could bring my mind to see any solid ground for the aboriginal title. I do say this, that the Indians deserve, and we ought to accord them, the most generous treatment that we possibly can, and I have always advocated that we should try to bring the Indians to the position of independent citizenship as quickly as we can. That is my position, and has been throughout my whole life in British Columbia; but I have never yet been able to see any sound ground for admitting the existence of an aboriginal title, and the evidence we have received here up to the moment, has only confirmed my views.

WITNESS: It seems to me that the view taken by the Hon. Mr. Stevens confirms our contention that it must necessarily be settled by a judical decision. We can argue on both sides of the table until we are black in the face, and we cannot get very far.

The CHAIRMAN: Just at that point, Mr. Kelly, I would like to read to you from page 54, of 1883 Law Reports Appeal Cases, the St. Catherine's Milling Company, vs. the Queen. Beginning at the bottom of the page:—

> It was suggested in the course of the argument for the Dominion that inasmuch as the proclamation recites that the territories thereby reserved for Indians had never been ceded to or purchased by the Crown, the entire property and the land remained with them.

That is practically your contention.

> That inference is, however, at variance with the terms of the instrument, which show that the tenure of the Indians was a personal and usufructuary right dependent upon the goodwill of the Sovereign.

There is a good deal more that I could read, but I think that covers the point.

WITNESS: Well, I would say, Mr. Chairman, the goodwill of the Sovereign has been to recognize whatever the aboriginal title of the Indian was in the past, It has always been so, and that has been very forcibly brought out in the report of the Minister of Justice in 1875, wherein he points out that very thing that the obligation of that goodwill was denied to the Indians of British Columbia.

By Hon. Mr. Murphy:

Q. Mr. Kelly, just before the Chairman read that extract, you said that the only way in which that question that you are submitting to this Committee can be settled, is by a judicial decision. Is that correct?—A. Yes, I said that.

Q. Do I understand you to take the position that that judicial decision should be rendered, not by the courts of Canada, but by the Imperial Privy Council?—A. We have been advised of that, but is seems to me, Mr. Chairman, that that is a matter of procedure.

Q. Have you any objection to submitting this question to the courts in Canada?—A. Not at all. Providing they are proper courts, not at all.

Q. I mean, the ordinary courts, to which all citizens have recourse. Do you object to go there?—A. Not at all. We do not object to that at all. The proper procedure is what we want. We do not want any unheard of procedure.

Q. No, you want the ordinary procedure?—A. Yes.

By Mr. McPherson:

Q. But, do you want it taken to the Privy Council first?—A. That court is the final Court of Appeal.

Hon. Mr. STEVENS: I think your counsel has always taken the position that you should go direct to the Privy Council. But here is your position as stated, and this is one of the things that objection is taken to:—

> That immediate steps be taken for facilitating independent proceedings—

Hon. Mr. MURPHY: That is what I have in mind, and that is why I asked my question.

By Hon. Mr. Stevens:

> —of the Allied Tribes and enabling them by securing reference of the Petition now in his Majesty's Privy Council, and such other independent judicial action as shall be found necessary to secure judgment of the judicial Committee of His Majesty's Privy Council, deciding all issues involved.

That is rather ambiguous language, but the intent of it is there.

WITNESS: That is a very contentious point, and perhaps we will take quite a little time, but I would like to sum it up if I am able to do so. The reason that was put that way was that Canada having entered into that McKenna or McBride Agreement with the Government of British Columbia, and by the text of that agreement, bringing to a final settlement all matters relating to Indian affairs in the Province of British Columbia, put itself in a position where it was not competent to defend the affairs of the Indians. Now, when we say that, it is not just our opinion. In fact, I will go beyond that. It is the opinion of the Hon. Mr. Doherty, the Minister of Justice in the Borden Government. That was the opinion he expressed.

By Hon. Mr. Stevens:

Q. You say that is his opinion. Where do you get that?

Mr. O'MEARA: It all appears clearly in the papers that you have.

WITNESS: We have that in black and white, so I am not speaking just from my memory.

Hon. Mr. STEVENS: These things are quoted rather recklessly sometimes.

Hon. Mr. MURPHY: Mr. Kelly says this is in black and white, it is on record.

WITNESS: Yes, it is a record.

The CHAIRMAN: It is in Appendix G of No. 1 of the proceedings of this Committee.

WITNESS: I will get Mr. O'Meara to bring it out. What we want now is Mr. Doherty's opinion.

Hon. Mr. STEVENS: Is this it on page 61, then continuing on page 62 of the proceedings of Wednesday?

Mr. O'MEARA: No, that has nothing to do with it, Mr. Stevens.

Hon. Mr. STEVENS: This happens to bear just on the point we are discussing. November 14th, 1914:—

> As to your remark that it has always been the view of those advising the Nishgas that the only feasible method of securing a judical determination of the rights of the Indians of British Columbia is that of bringing their claims directly before His Majesty's Pricy Council. I wish

> you would realize as an endeavour to convince those whom you describe as advising the Nishgas that this Government has no power or authority to refer a question directly to His Majesty's Privy Council; that the only constitutional method of obtaining the judicial view of His Majesty in Council, relating to a question limited to the internal affairs of Canada is by appeal from the local tribunals.

That bears out what has been said.

Mr. McPherson: You have to begin in the local courts and then if the decision is against you, appeal from it. You might skip one or two of the local courts of appeal, and get permission to go directly to the Privy Council.

Hon. Mr. Stevens: That was clearly impressed upon Mr. O'Meara.

Mr. O'Meara: May I suggest that judgment be reserved in the matter.

Hon. Mr. Murphy: A few lines further down, that letter continues:—

> If therefore it be possible for me to make any statement here which can, consistently with the amenities of official correspondence, impress you with the futility of urging upon this Government a reference direct to the judicial committee, I beg of you to consider that statement incorporated in this letter.

Witness: Here are the words that we referred to. This is a quotation from the opinion of the Minister of Justice issued in month of December, 1913, from which the following words are taken.

By Hon. Mr. Stevens:

Q. What are you reading from?—A. Relating to the McKenna-McBride agreement, already quoted. I am reading from notes which were prepared for the Hon. H. H. Stevens, Acting Minister of the Interior, on the 6th of January, 1926.

By the Chairman:

Q. Is that a document which has been placed before the Committee?—A. No, it has not yet been placed before the Committee. I refer to page 3, and the date is the 6th of July.

Q. If you are going to read from that document, it should be placed on record?—A. We will place it on record.

Mr. O'Meara: It is a very desirable thing to have on record.

By Hon. Mr. McLennan:

Read it in the meantime?—A. The whole document?

Q. No, just the part you wish to quote?—A. This refers to the McKenna-McBride agreement. (Reads Extract).

Hon. Mr. Stevens: That is an extract sent to a Minister, from an opinion of the Minister of Justice. Now, where is that opinion? It is hardly fair to put in evidence an extract from a statement alleged to have been made by the Minister of Justice, read from a document prepared by Mr. O'Meara. There is not even a reference to what it is from.

Witness: I beg to say it is a direct quotation. It is not simply referring to what was offered, but it is a direct quotation.

Hon. Mr. Stevens: I say that it is an extract, but I say that it is hardly fair to take an extract in that way.

Mr. O'Meara: The opinion is available.

By Hon. Mr. Murphy:

Q. Is that an extract from a letter written by the then Minister of Justice?—A. By Mr. Doherty, yes.

Q. To whom?—A. It was an opinion given on the McKenna-McBride Agreement, for the benefit of his government. Is that not right, Mr. O'Meara?

Mr. O'MEARA: And handed out to us.

By Hon. Mr. Murphy:

Q. It was not a letter then?—A. It was not a letter, no.

Mr. O'MEARA: It was an opinion. A memorandum of an opinion handed to us.

Hon. Mr. STEVENS: Where is the original?

Mr. O'MEARA: It is no doubt on file in the Department.

By the Chairman:

Q. Have you the original of that opinion, Mr. Kelly?—A. We will have the original placed on record. Mr. O'Meara will get the original, if that will satisfy the Committee.

By Hon. Mr. Stewart:

Q. Mr. Kelly, Mr. Stevens quoted from an extract or from a subsequent statement by Mr. Doherty with respect to going direct to the Privy Council? —A. That bears simply on the matter of procedure, does it not? It was because of that that we stress the matter of independent proceedings to the Privy Council.

Hon. Mr. MURPHY: You had previously over the signature of the Minister of Justice the assurance of the Government of Canada to this effect:—

> I should think it unlikely that the Indians would concern themselves with procedure. They have, I imagine, sufficient discernment to proceed, if their deliberations be not influenced to the contrary. The question of procedure is at present quite irrelevant. No point of procedure will be permitted to prejudice the decision on the merits of the case, and the Government will see to it that the proceedings are brought and conducted in such a manner as to provide for the admission of all the parties and arguments which are material.

That is an assurance given over the signature of the Minister of Justice, on behalf of the Government of Canada. Now, surely it is a waste of time to be discussing procedure twelve years after that letter was written.

The CHAIRMAN: Before that extract is proved it can hardly be allowed to go into the record as evidence.

Hon. Mr. STEVENS: I would like to draw attention to this extract, which Mr. O'Meara has put into this memorandum.

Hon. Mr. MURPHY: That Mr. Kelly has just read?

Hon. Mr. STEVENS: Yes. It deals with a somewhat different subject. The point then was that this McKenna Commission dealt with—and the Minister of Justice of the day, according to this, says that—this reference to the Royal Commission was the lands, and then he goes on to say—apropos of what, I do not know, because we have not the context—that the question of the aboriginal title was not relevant, which Mr. O'Meara injects into this; and then what I objected to the other day is that this is stated as if it was a positive finding of the Minister of Justice that there was an aboriginal title. That is what I object to, that he is putting this in as evidence when it is not evidence at all. That is the type of procedure I object to before the Committee.

The CHAIRMAN: Mr. Stevens, then you agree that this should not go into the record at all?

Hon. Mr. STEVENS: This quotation of the Minister of Justice should not go into the record at all because we have not got the document it is taken from; all we are doing is taking Mr. O'Meara's word that he got it from somewhere.

The WITNESS: Will it be all right to go in if we get the proper documents?

The CHAIRMAN: You get the proper documents.

Hon. Mr. STEVENS: On the other hand, these other documents are before us in the proper official manner.

Mr. O'MEARA: May I ask for information? I have a copy of that, but it is not available at the moment.

The CHAIRMAN: It will be on record in the Department of Justice?

Mr. O'MEARA: Certainly.

The WITNESS: There is no doubt about the existence of this.

Hon. Mr. STEVENS: I am not questioning it.

Mr. MCPHERSON: It is a question of how the extract deals with the context.

The WITNESS: The reason that question has arisen is this: I do not think the Committee has heard this side of it; if they have, I do not know it. As you know, to-day is my first presence here, and I did not notice in the record of the proceedings this particular phase of it. There was an Order in Council brought into existence in June, 1914, which made provision for the reference of the case through the proper courts to the Privy Council.

By the Chairman:

Q. Where is that Order in Council, is that in this record?—A. No. We are trying to get this Committee to agree to our submitting a connected form of our case so that it will go on record.

By Hon. Mr. Stevens:

Q. I will just give you precisely what has happened. The other day, Mr. O'Meara, presuming to represent you as counsel, would persist in making quotations and reading such things as this?—A. I beg your pardon, the Order in Council is on record at page 55.

Q. We are not objecting to the production of these things, but we do ask that when they are referred to they should be produced?—A. The reason that was objected to—the Indians, without exception, objected to that. Just take that and come down to the body of it, No. 1.

Hon. Mr. MURPHY: Reading now from page 55?

Hon. Mr. STEVENS: P.C. 751, dated 20th June, 1914.

The WITNESS: We have the preamble set out, then we come to the body. No. 1 reads as follows:—

> The Indians of British Columbia shall, by their chiefs or representatives, in a binding way, agree, if the court, or on appeal, the Privy Council, decides that they have a title to lands of the province, to surrender such title, receiving from the Dominion benefits to be granted for extinguishment of title in accordance with past usage of the Crown in satisfying the Indian claim to unsurrendered territory, and to accept the findings of the Royal Commission on Indian Affairs in British Columbia as approved by the Governments of the Dominion and the province as a full allotment of Reserve lands to be administered for their benefit as part of the compensation.

Now, that was the heart of the issue, as we took it. The Indians were asked, you see, " in a binding way through their Chiefs and representatives," to agree to whatever the Government saw fit to submit to us as satisfying our title and extinguishing our title.

By Hon. Mr. McLennan:

Q. Part of the covenancy for your surrendering the title was the reserves; the reserves were to be considered to be part of the compensation?—A. Yes.

Q. If they had given you $100,000,000, you would have had to surrender title and take the lands as part of the compensation?—A. That is so.

Q. That is the way it reads?—A. It does not read that way.

By Hon. Mr. Stevens:

Q. A moment ago you took the stand that what you claimed was that you had a right to settle this question as it had been settled in other parts of Canada; that the British Columbia Indians had been treated differently. That says: "benefits to be granted for extinguishment of title in accordance with past usage of the Crown." Now, that is throughout the whole of Canada?—A. Exactly. Just a while ago I pointed out the fact that in the other parts of the Dominion Commissioners were sent out and they met the Indians in a formal way in council and negotiations took place. I said that perhaps it was just a formal procedure; it might be true that treaties were drawn up beforehand and the Indians could not make any advance in reference to them, but the fact is they had negotiations and the Indians were met and terms discussed and agreed to. This says that we shall accept whatever the Government sees fit to give to us.

Q. It says, "receiving from the Dominion benefits to be granted for extinguishment of title in accordance with past usage of the Crown in satisfying the Indian claim to unsurrendered territory?"—A. There would have been no objection, I assure this Committee, to this particular paragraph if there was any reference made to negotiations, if the Indians were to be represented there and after talking about the matter we would agree to some sort of settlement.

Dr. Scott: The whole thing is provided for in the clause. Negotiations would have to take place, but the benefits would be in accordance with past usage of the Crown in these matters.

Hon. Mr. Murphy: Not merely past usage in relation to the Indians of British Columbia, but the Indians of the whole Dominion?

Dr. Scott: Yes. In the memorandum which accompanied it I explained what these usages were, and in my report I analyzed some of these things, but there was to be an agreement according to the past usage of the Crown.

Hon. Mr. McLennan: Were the Indians made aware of that?

Dr. Scott: This was never brought before them in a formal way. This Order in Council was printed and they knew what it was. Of course, the real objection was that they did not wish to accept the findings of the Royal Commission.

The Witness: I think the Doctor will agree with this: that forms were sent out to the different agencies in the province of British Columbia and it was demanded that the Indian Chiefs or representatives sign their names signing away their rights, even before they knew the contents of the report of the Royal Commission.

Dr. Scott: That is quite wrong; that is not the fact at all. I gave my agents certain copies but they were not authorized or directed to submit them to the Indians or discuss them with the Indians. It was only for their own information, but Mr. Kelly got a copy.

The Witness: If my understanding of that is wrong I am quite willing to be corrected; I do not wish to stretch anything beyond its proper meaning and intention. Since the Deputy Minister of Indian Affairs has brought this before the Committee and given that explanation, I accept his explanation.

By Hon. Mr. Murphy:

Q. Mr. Kelly, this P.C. 751 not only provides for what Dr. Scott said, but it goes on to say that in the event of submission to the Courts the Government of British Columbia shall be represented by counsel and the Indians shall be represented by counsel nominated and paid by the Dominion?—A. Yes.

Q. So that there was every provision made in this Order in Council for safeguarding the rights of the Indians, and for submitting them properly to the court?—A. If the Indians were taken into confidence a little more I think a great deal of misunderstanding and trouble would have been eliminated. I say that in all seriousness.

Q. You mean that if the terms of this Order in Council had been first submitted to a conference or meeting, such as you describe, and all the matters thrashed out and fully understood, the whole thing would have been probably agreed to then?—A. I think so. I firmly believe that if that sort of thing had been done a great deal of trouble would have been eliminated. It has not been done. I hope that the Committee is prepared to admit this; that we are not quite as illiterate as we used to be; we are not quite as ignorant as we used to be in British Columbia sixty or seventy-five years ago. We have made a little progress since that day. My friend, Mr. Paull, the Secretary of our Alliance, is a very competent man, and I think seemed to impress the Committee. They are not all just like him but we have—

Q. He is a fair sample?—A. He is a fair sample of a good many. We have young men who are capable of doing their own thinking and who are capable of seeing things just as any ordinary man. There has not been a frank understanding about that particular matter. I would like to give a great deal of credit to the present Minister of the Interior, not because he is here, but I think he was the first Minister of the Crown who made a trip to British Columbia to find out the facts of the case as far as he was able to, and who met us in conference and discussed matters frankly. Now, we did not go the whole way, but I think it was the beginning of a progress. It was the sort of thing that should have been done in days gone by, but it was not done, and because of that there has been a great deal of misunderstanding and perhaps a great deal of expenditure of money needlessly. I say that in all frankness. We have taken our interpretation of this Order in Council, whether rightly or wrongly, and the report of the Royal Commission was not acceptable to the Indians. We had to agree to that, as you see in the reading of this, to accept that which was objectionable.

By Hon. Mr. Stevens:

Q. You were asked to accept before the Royal Commission made their findings; this was when the Royal Commission were really doing their work?—A. (No audible answer.)

Mr. PAULL: They were right in the field.

By Hon. Mr. Stevens:

Q. They were in the field?—A. Yes.

Q. They were asking you to accept a finding that was repugnant to you? They were asking that you would accept, as the two governments had, the finding of this Commission, and abide by it, as to lands and lands alone. Surely that is not unreasonable?—A. I think Mr. Stevens knows that the Indians strongly objected to great areas being cut off, which was part of the report of that Royal Commission; 30,000 acres in Penticton.

Q. You did not know at the time you turned this down?

Mr. PAULL: That is why the Indians would not agree to the contents of this Order in Council, before they knew what the report of the Commission would be.

Hon. Mr. STEVENS: That may be the reason, but I am pointing out that they could not have objected to the McKenna Report because they did not know what it was.

Mr. PAULL: That is the very reason. We were asked to accept something in the report which we did not know anything of. Another condition was that this report would be accepted by the two governments. The actual facts of the case are these; that the Dominion Government did not accept this report until ten years from the time this Order in Council was passed. Were the Indians to accept a report which they knew nothing of? Supposing, in 1914, the Indians had agreed to the provisions of the Royal Commission. Some of them would have been very sorry now, because great portions of the best parts of their reserve are cut out by that Commission.

Mr. DITCHBURN: You were not being asked to do that, Mr. Paull.

Hon. Mr. STEVENS: That is what I am trying to impress on the minds of the Committee. Both Mr. Kelly and Mr. Paull are arguing this thing wrong. This is a voluntary act on the part of the Government to try and assist this thing to a settlement.

The WITNESS: I beg to correct that. I do not think the Hon. Mr. Stevens is just correct when he says that.

Hon. Mr. STEVENS: Not correct in what?

The WITNESS: In this respect: that the Commission had power, not only to make additions to the Indian lands, but to cut off, and the Indians objected to that word "cut-off". They did not know what was going to be cut off and that was one of the objections. If they agreed to that they did not know where they were going to get off at.

Mr. DITCHBURN: At that time the cut-off was only to be made with the consent of the Indians; you will remember that.

The WITNESS: Perhaps it was with the consent of the Indians. Well, that was one of the objections.

Hon. Mr. STEVENS: It could not be an objection if it did not exist at that time.

Mr. DITCHBURN: There was no objection, then, because of the cut-off.

Hon. Mr. STEVENS: Because, as Mr. Ditchburn says, the cut-off was subsequent to the agreement by the Indians.

The WITNESS: I am just a little bit at a loss; my memory does not carry me back that far.

Hon. Mr. STEWART: There is no doubt, as far as I can discover, that the Indians were never prepared to agree; the body of Indians I came in contact with, known as the representatives of the Allied Tribes, were never prepared to agree to the full text of the land settlement, for two reasons. One that there were cut-offs which they thought were too extravagant, and the other was that they did not think they had land enough in the whole area provided for the Indians.

By Hon. Mr. Stewart:

Q. Those were the two reasons you gave me when we were discussing this?—A. That is quite right.

Hon. Mr. STEWART: I do not know that we will get very far in discussing what might have happened or what might have been done. The fact remains that you never signed the agreement to that effect, and it is still unsigned. What I would like to get from you is this: you have put in a petition of rights to Parliament, and subsequently you have filed a petition asking that you be permitted to go to the Privy Council; that is the text of the latest petition, the one that we are discussing now?

By Hon. Mr. Stewart:

Q. Are you still satisfied that that petition will satisfy the people you represent? That is, you ask for certain things; the latest addition to which I took exception was $2,000,000; the other was mostly for education and all that sort of thing. You are still in the same position as when you filed that petition?—A. Yes; we have had no occasion to change our minds; we are exactly in the same position we were in then.

Q. That has extinguished the claim you might have to aboriginal title?—A. Yes.

By Mr. McPherson:

Q. And you want the Privy Council to fix the terms of the extinguishing?

Hon. Mr. STEWART: Mr. Kelly and I have discussed that, and I do not know whether or not that should come up here. That is the one thing which caused me to hesitate to suggest to our government, or even later to discuss it in Parliament—a reference to the Courts. In discussing it it developed that Mr. Kelly and others held the view that in all probability, even if it reached the Privy Council—Perhaps I had better preface that by saying this to them; law is usually, when it is obscure, a matter of precedent; a precedent exists all over Canada; the government has dealt with the Indian tribes largely by Treaty, sometimes otherwise; but throughout this, the fact was very apparent that the Crown, whether by conquest or otherwise, claimed the land, and they were dealing with the Indians on the basis of providing them adequately with land to carry on as Indian people, and later, by education, medical attention, and otherwise. That discussion, in my opinion, would be settled by precedent, even if it reached that stage, and then we would be left in a very unsatisfactory position, by the Courts or the Privy Council deciding what the terms were to be; that would still have to be settled. I think that was agreed to very largely by you, Mr. Kelly.

The WITNESS: Yes.

Hon. Mr. STEWART: If that is the case, that is why I hesitated at once to recommend procedure by law. The reason this has not been settled is that there has been a hope that some grounds of settlement could be arrived at, but as yet it has not been reached, and the British Columbia Government, no matter of what political stripe, maintains the position—and we may as well be frank—that all they would do was to provide adequate reserves for the Indians, and the rest of the problem was for the Federal government, leaving the thing in a very obscure position so that we would still have to settle all these things in detail.

The WITNESS: I want to read a couple of paragraphs from the record No. 1 of March 30th, appearing on page 31, appendix A, "Statement of the Allied Indian Tribes of British Columbia for the government of British Columbia; General Introductory Remarks:

> The statement prepared by the committee appointed by the conference held at Vancouver in June, 1916, and sent to the government of Canada, and the Secretary of State for the Colonies, contained the following:
>
> The committee concludes this statement by asserting that while it is believed that all of the Indian tribes of the province will press on to the judicial committee, refusing to consider any so-called settlement made up under the McKenna agreement, the committee also feels certain that the tribes allied for that purpose will always be ready to consider any really equitable method of settlement, out of Court, which might be proposed by the governments.

We still maintain that position to-day, and we think it is a fair position to take.

A resolution passed by the Interior Tribes at a meeting at Spencer's Bridge on the 6th December, 1917, contained the following:—

We are sure that the government and a considerable number of white men have for many years had in their minds a quite wrong idea of the claims which we make, and the settlement which we desire. We do not want anything extravagant, and we do not want anything hurtful to the real interests of the white people. We want that our actual rights be determined and recognized; we want a settlement based upon justice. We want a full opportunity of making a future for ourselves. We want all this done in such a way that in the future we shall be able to live and work with the white people as our brothers and fellow-citizens.

I think that brings before this committee the real mind of the Indians of British Columbia. After all, I think we are not so very far apart, if we are willing to admit that the Indians have a right.

By Hon. Mr. Stevens:

Q. Are you through, Mr. Kelly?—A. I do not think that there is any more that I can add to it. Mr. Chairman, I would like to say this: it seems to me that this high court of this Parliament of Canada—at least, some of the members of it—have not come to any decision. There is the question, have we any right? If we have no right, why have we no right? The right has never been taken away from us, as has been conceded time and again. The government takes that view; then why not deal with our right, as we have been asking for? That is putting the thing in a nutshell.

Q. I do not know how you establish that.—A. We say our aboriginal title has never been extinguished. Can you show us when it has been extinguished; if it has been, it was done while we were asleep.

Dr. Scott: It has been extinguished from 104,000 acres, more or less, by Treaty Number 8.

Hon. Mr. Stevens: I think it was extinguished in the lower part of Vancouver Island by Treaty.

The Witness: Yes, we admit that. We have admitted where it has been done. The Hudson's Bay Company has done that.

By Hon. Mr. Stevens:

Q. Then there would appear to be an extinguishment of it—I cannot say there is any document or instrument available—by common consent over a very, very long period of years, by acquiescence on the part of the Indians, and there has not been a single citation that I can recall of early negotiations, which did not rest upon merely a discussion of the area to be set aside. The fact that the Queen or other authority was setting aside an area seems to permeate every negotiation.—A. I think that is the very point on which we differ. One member says that it has died a natural death, if one may put it that way, because many years have elapsed since the matter was discussed, or at least acknowledged or recognized by the government, and it has not yet been dealt with.

Hon. Mr. McLennan: You want to go further back than that.

Hon. Mr. Stevens: Prior to Confederation.

Hon. Mr. McLennan: When the British people came to British Columbia, they exercised without contest the right to sovereignty.

Hon. Mr. Stevens: They took possession of the land in the name of the Queen, or of the King, as the case might be.

Hon. Mr. McLennan: Yes. And occupation continued from that time.

WITNESS: Well, once again, I maintain, if you say that we have not established our position, then just in the same measure the Government cannot show—either this Government or the Provincial—cannot show by what instrument the Indian title has ever been extinguished.

Mr. MCPHERSON: In a great number of the provinces, titles have been extinguished in thirty years. That is, title to land has been lost by right of occupation, by an adverse occupant.

Hon. Mr. STEVENS: Squatters' rights.

WITNESS: Then white men who came to British Columbia were squatters?

Mr. MCPHERSON: We might say that.

Hon. Mr. STEVENS: There are lots of squatters in British Columbia now. There are some right in the heart of Vancouver.

WITNESS: If you take that position, then may I say this?

Mr. MCPHERSON: I am not taking that position, I am suggesting that the extinguishment of title by occupation is not an unheard of statement.

WITNESS: Then the land that has not been squatted upon is the land of the Indians.

Mr. MCPHERSON: No, the King took possession of the whole territory.

Mr. PAULL: Mr. Chairman, if I may interrupt for the moment?

The CHAIRMAN: No, wait until Mr. Kelly finishes.

WITNESS: Mr. Chairman, I began with a plea for tolerance on behalf of our counsel to present his argument, just to meet such questions as are now being brought to the surface; to present a constitutional argument so that, whether it be strong or weak, the constitutional side of our stand may be presented in a full way. Then, gentlemen, I would take it that you would be in a position to decide in a very fair, unbiased way, whatever you wish to decide upon this very important question.

The CHAIRMAN: The Committee will take that into consideration.

By Hon. Mr. Stewart:

Q. Mr. Kelly, supposing Dr. Scott has made an estimate based upon a settlement by treaty of a certain portion of Vancouver Island; if he has taken the amount of that settlement and has calculated it on that basis, that if the rest of the title had been settled at that time by treaty, and the amount had been claimed—that has not been discussed this afternoon, but what would your opinion be? Have you seen that statement?—A. No, I have not.

Q. It would be unfair then to ask you the question?—A. I have not studied that at all.

Mr. PAULL: May I ask which statement that is?

Hon. Mr. STEWART: It is a statement in Dr. Scott's memorandum, indicating what your title would have been worth at that particular time on the basis of the other.

Mr. PAULL: He estimated that in twenty years, it would have been worth, $2,472,000.

Dr. SCOTT: No, that is not what the Minister referred to at all. He refers to the comparative statement that I made when I was addressing the Committee, and which appears on page 15.

Hon. Mr. STEWART: This is on the Treaty for Vancouver Island.

Dr. SCOTT: It appears on page 15 of the proceedings of March 30, and the following pages 16 and 17.

Hon. Mr. STEWART: I do not want to delay the Committee to ask Mr. Kelly that question.

Mr. PAULL: Vancouver Island happens to be my constituency, so to speak, and that is why I am anxious to speak about it. Mr. Kelly deals with the other parts of the province. I am entrusted with the work of discussing the matter of the treaties that were entered into with the Hudson Bay Company.

Hon. Mr. MURPHY: As they affect Vancouver Island?

Mr. PAULL: Yes.

Hon. Mr. STEVENS: Are you bringing them into the question?

Mr. PAULL: No, I am not introducing that. I thought that was what we were being asked about.

Hon. Mr. MCLENNAN: Here is a calculation based on what was paid when that title was extinguished.

Mr. MCPHERSON: It was based on one dollar a square mile. I thought Mr. Stewart was asking you whether you would be satisfied with one dollar a square mile.

Mr. PAULL: Then I understand you. The Indians in the immediate vicinity of where these treaties were made contended that they only sold a certain area of the land, and that they did not sell their aboriginal title.

Mr. MCPHERSON: I think what Mr. Paull means is that while they sold a definite location, they still claimed an interest in the balance of the Province.

Mr. PAULL: Shall I read the Treaty?

Hon. Mr. MURPHY: What he said was that they still held an interest in what they sold.

Hon. Mr. MCLENNAN: That is that they maintained their soverign rights.

WITNESS: Mr. Chairman, let us be fair. I submit that the Committee is not quite fair to us in this. Because the Hudson Bay Company gave a blanket here and there to the Indians, and thereby claimed a certain area of land, it cannot be said that that was a fair dealing at all. Surely that can be conceded. Surely no hon. gentleman would suggest that on the basis of what the Hudson Bay Company has done in a certain portion of Vancouver Island, now in this way any Government would begin to treat with non-Treaty Indians. The idea of one dollar per square mile is impossible.

By Hon. Mr. Barnard:

Q. For the Indian title?—A. Yes. I think it is an insult to intelligence for any title, whether Indian or any other.

By Hon. Mr. Stevens:

Q. Mr. Kelly, before you get warmed up, let us come to the complaint that the Indians of British Columbia have not an opportunity of negotiating treaties on the same basis and in the same manner as others have. That was one of your complaints?—A. Quite so.

Q. Now, as a matter of fact, two sections of British Columbia were dealt with by treaty in precisely that manner?—A. By the Hudson Bay Company.

Q. By the authorities of that time?

By Hon. Mr. Barnard:

Q. They were not both by the Hudson Bay Company?—A. Vancouver Island was by the Hudson Bay Company.

By Hon. Mr. Stevens:

Q. One was by the Crown?—A. That is the one that is brought in as a suggested basis, Vancouver Island, which was done by the Hudson Bay Company; not Treaty No. 28.

Q. I have not given utterance to the thought that that should be the basis of settlement, but supposing the question of the aboriginal title is admitted,

what would you want? That is what we have been trying to get from every witness who has been before us, but we have never been able to get it?—A. I do not think that is a fair statement. Dr. Scott has filed as part of the evidence submitted by him, our claim; what we consider to be an equitable basis of settlement, and I cannot see why it is asserted again and again that we have not made any specific claim, but have merely made a sort of general claim. That is not a fair thing to say.

Q. I am talking about the aboriginal title? —A. Exactly. The aboriginal title is what I am discussing. It is what we ask for in extinguishment of the aboriginal title.

Mr. DITCHBORN: Mr. Kelly, in a portion of Vancouver Island they sold not only the aboriginal title but they sold the whole of the land, retaining only certain areas for their reserves. They not only ceded the aboriginal title, but they sold the whole of that land to the Hudson Bay Company, and that was always recognized by the Victoria Government afterwards.

WITNESS: I am not disputing that. I do not intend to repudiate what was done, however unjust it was. I am not for one moment repudiating that. It was done. Whatever area was described by those treaties, of course we are bound by to-day. We do not question that for one moment. But what we do say is, why pick out that as being the basis for dealing with the other parts of the provinces?

By Hon. Mr. McLennan:

Q. It is for you to bring forward evidence controverting it. This was a thing which actually took place at a certain time?—A. Yes, it was done by a trading company.

Hon. Mr. MCLENNAN: What the Department of the Interior says is not law to the Committee. It is simply something to enlighten us, and we are anxious to hear from you anything that will enlighten us on the other side.

WITNESS: On page 36 of No. 1 this appears:—

Conditions proposed as basis of settlement.

Now, is not this what you want, Mr. Chairman? I take it this is what he asked for. I am reading from page 36 of No. 1 of the proceedings of this Committee, on Wednesday, March 30.

By Hon. Mr. Stevens:

Q. Are they all set forth on these three pages signed by yourself and Mr. Teit?—A. Yes.

Mr. PAULL: Those are the conditions on which we are agreed to relinquish any title we may have.

WITNESS: To carry this out, I presume this Committee would have to labour for a year, to get through all the details of it. You can only recommend in a general way. If you wish me to read it, I will read it?

The CHAIRMAN: No, it is not necessary to read it.

WITNESS: Well, there it is then; these are the conditions we have put forward, and this was amplified when we met the Deputy Superintendent General of Indian Affairs in Victoria, in the summer of 1923, appendix "H" I believe it is.

Hon. Mr. STEVENS: I think they want the grant of the existence of aboriginal title, and, secondly, those are the conditions under which they are prepared to surrender that aboriginal title; that is really what it amounts to.

Hon. Mr. STEWART: That is the contention, yes. With respect to fishing, there are not many complaints.

By Hon. Mr. Stewart:

Q. The complaints with respect to fishing rights have been greatly reduced since 1922?—A. Yes, they have been wonderfully adjusted; discriminations against the Indians have been done away with, I am glad to say, since that Commission on fisheries made its recommendations. But this is a sore point; when an Indian needs fish for food it has been made harder for him to get it; for commercial fishing he has been put on equal footing with the white man.

Q. Fishing for food, what is the difficulty about that?—A. I will give you a case in point. Just a year ago last summer a young man went up the Nanaimo river and speared a salmon, and he was hauled up by the guardian and the fish taken from him.

Q. The Provincial Guardian?—A. No, the Dominion Guardian.

Q. One of our own fisheries men?—A. Under the Fisheries Act. He was taken to court and fined. That is only one instance of many similar cases. The point, of course, made out was this; that he had to get a special permit before he could catch fish for himself.

By Hon. Mr. Stevens:

Q. What permit is this; is it a very difficult thing to get—A. It is a written permit on which is specified the time limits in which he is privileged to catch fish for food, and the manner in which he shall catch the fish is specified also.

By Mr. Hay:

Q. He killed this fish out of season?—A. No, it was not out of season; he did not have a permit.

By Hon. Mr. McLennan:

Q. Would the white man have been subjected to the same thing if he had taken out fish without a permit?—A. I suppose so.

Hon. Mr .Stevens: What explanation do you give, Mr. Ditchburn, from your acting as a sort of guardian of the Indians' rights, of that instance; what is your view?

Mr. Ditchburn: Of the fishing?

Hon. Mr. Stevens: Of an instance such as Mr. Kelly mentions?

Mr. Ditchburn: Well, this Indian was pulled up for non-compliance with the regulations set up by the Department of Fisheries, whereby he must not take fish for food purposes without a license. They were not allowed to take fish by means of a spear or gaff hook; they are now, in some instances, but they specify the method of taking these fish in different streams.

Hon. Mr. Stevens: From your knowledge of the situation do you consider there was a grievance because of this regulation?

Mr. Ditchburn: I think so; I felt that they had a right to get at these fish. I think it is a matter of not interpreting the spirit of the regulation properly. If the local authorities would use a little more common judgment and have a proper appreciation of things, I do not think there would be half the trouble with the Indians that there is.

The Chairman: When you say that, does that apply to the other?

Mr. Ditchburn: As far as I know, in British Columbia all the fisheries are held by the Dominion Department; I do not think that the Provincial Game Branch does anything about fisheries at all.

The Chairman: What I mean is, have you had complaints from up-country of the same nature as Mr. Kelly mentions here as occurring down on the coast?

Mr. Ditchburn: Well, they occur at different positions; it depends on where the Indians are taking their fish. Sometimes they allow them to take

them on spears; sometimes with a dip net; sometimes by a gaff, and sometimes by little pens. There would not be half the trouble with these Indians if the officials would go out and find out just what practical methods could be put into effect at the different points. That does not seem to have been done so far.

Hon. Mr. McLennan: Is there any difficulty in applying for a permit?

Mr. Ditchburn: Not for food purposes.

Hon. Mr. Stewart: As far as I can learn, with few exceptions we have pretty well met the petition. We will have the Fishery Commissioner, Mr. Found, here. Mr. Ditchburn does think that the Indians are entitled to more consideration than they have got.

The Witness: I am very glad the Commissioner of Indian Affairs has made the explanation. He knows exactly what he is talking about. We had a discussion with Mr. Found in Ottawa two or three years ago on that very thing. He said that the Capilano river was for the sportsmen of British Columbia and the Indians' needs were not to be considered; that the sportsmen, fishing with a fly, rod and line, had the right of way and the Indian wanting to ge fish for food, and getting it with a gaff, was not to be considered; he was to be punished for doing so. Those are the words, and if the gentleman was here I think he would confirm them. Mr. Paull said to him, "Where will we go for our fish?" "Oh, go to Vancouver Island, the Cowichan river, or some other river on Vancouver Island, and get your fish. That particular thing is too valuable; it is for the interests of sportsmen, and not for the needs of Indians." That sort of spirit has aggravated things. There is too much of that.

The Chairman: Gentlemen, it is six o'clock, and we have had a long sitting this afternoon. When shall we meet again?

The witness retired.

The committee adjourned until Tuesday, April 5, 1927, at 10 a.m.

EXHIBIT NO. 4

From Andrew Paull

Allied Indian Tribes of British Columbia

We represent nominally all the Indians of British Columbia with the exception of those Indians coming under Treaty No. 8, and the Songhees and the Sooke Indians on Vancouver Island.

At the conference in June, 1916, the following tribes were allied.

The Interior:—The Okanagan, Lake or Senjextee, Thompson River at Courteau, Shuswap, Lilooet, Kutenai, Chilcotin, Carrier, Tahlton, Kasha; and on

The Coast and North:—The Nishga, Tsimpshian tribes, Kitikshian, Haida, Bellacoola, Cowichan and Lower Fraser or Stalo.

A larger alliance was formed in the year 1922 when the following tribes were represented:—

"The Reverend Chairman informed the meeting that this was not an allied tribe meeting but a general meeting of all B.C. Indians, and for the assembly to express their views.

Those present were as follows:—Rev. P. R. Kelly, representing Haida tribe; Charlie Saylaykultin, representing Musquean; Chief Paul White, representing Naimo; Chief Billy Yaklum, representing Naniamo; Sam Smith, representing Naniamo; Chief Charlie, representing Naniamo; Chief George, representing Cowichan; Chief Modiste, representing Cowichan; John Elliott, representing Cowichan; Chief David, representing Saanich Tribe; Tommy Paul, representing Saanich Tribe; Chris Paul, representing Saanich Tribe; Chief Billy Asser, representing Cape Mudge Tribe; James Howell, representing Cape Mudge Tribe; Johnny Dick, representing Cape Mudge Tribe; Chas. Nowell, representing Albert Bay Tribe; Johnny Drable, representing Albert Bay Tribe; Harry Mountain, representing Fort Rupert Tribe; Chief Smith, representing

Fort Rupert Tribe; Bob Harris, representing Fort Rupert Tribe; Jim Humchet, representing Kingcome Inlet; Harry Johnson, representing Kingcome Inlet; Albert King, representing Bella Coola; Rueben Schooner, representing Bella Coola; Chief Harry Stewart, representing Lower Fraser Tribes; George Matheson, representing Lower Fraser Tribes; Chief Harry Joe, representing Lower Fraser Tribes; Dennis Peters, representing Lower Fraser Tribes; Chief Stephen Retasket, representing Lilloett Tribes; Johnny Antoine, representing Lilloett Tribes; Chief Harry Peters, representing Fort Douglas Tribes; Chief A. J. Stager, representing Pemberton Tribes; Paul Dick, representing Pemberton Tribes; Willie Pascal, representing Pemberton Tribes; Aleck Leonard, representing Kamloops Tribes; Johnny Galokuun, representing Campbell River Tribes; Chief Bazil David, representing Smilkamien Tribes; Wm. Turpaskitt, representing Smilkamien Tribes; Narcisse Batiste, representing Nakämip Tribes; Chief Michael Jack, representing Penticton Tribes; Jimmy Antoine, representing Okanagon Tribes; Francoise Guguere, representing Okanagon Tribes; Joseph George, representing Fairview Tribes; Chief Johnny Chillikitza, representing Nicola Valley Tribes; Chief Jonoh, representing Merritt Nicola Valley; Ambrose Reid, representing Esimptian Tribes; Andrew Paull, representing Squamish Tribes; Chief Mathias, representing Squamish Tribes; Chief George, representing Squamish Tribes; Chief Moses Joseph, representing Squamish Tribes.

At the above mentioned meeting, the following resolution was passed.

Whereas it is apparent that there are two factions of organization at this meeting, namely the Allied Tribes and independent party. To try and bring these two parties together, therefore, be it resolved that the Indians of B.C. join an organization of Indians to fight Bills 13 and 14 and adopt for its policy the statement of the Allied Indian Tribes of B.C. for the Government of B.C., said organization to have standing executive committee which will consist of Indians and others deemed acceptable by Interiors."

Since the above meeting all Indians on the coast of the main land and on the east and west coast of Vancouver Island have joined that organization.

Certified Correct,

ANDREW PAULL,
Secretary.

EXHIBIT NO. 5
From A. D. MacIntyre

A Joint Committee on Indian Affairs of Senate and House of Commons

Names of Indian Chiefs and their Reserves of the Interior of British Columbia represented by Chief Johnny Chillitza, hereditary Chief of the Okanagan tribes.

Chief Basil David of the Bonaparte of the Cariboo tribes; Chief William Pierrish of the Shuswap Reserve for the Shuswap tribes, and Chief Etienne Adrian of Squilax, also a Shuswap; Chief Eli Larue, Kamloops Reserve; Chief Jimmy Gabriel, Clinton Reserve; Chief Joe Moses, High Bar Reserve; Chief Wm. Tilliam, Williams Lake Reserve; Chief Sampson, Alkali Lake Reserve; Chief Louie Timmaskin, Canoe Creek Reserve; Chief Christopher, Canim Lake Reserve; Chief Joe Machel, Silver Creek Reserve; Chief Jimmy Antoine, Dead Man's Creek Reserve; Chief Major Checkslish, Leon's Creek Reserve; Chief Duncan, Prince George Reserve; Chief Michel, Masco Reserve; Chief Morris Gray, Tlooskis Lake Reserve; Chief Tommy Sannish, Anahame Lake Reserve; Chief Edian Chilhouwskin, Chase Reserve; Chief Charlie Francois, Squilax Reserve; Chief Johnny Isaac, Okanagan Reserve; Chief Louie Paul, Athlmer Reserve; Chief David Cassimer, Chuchua Reserve; Chief Scottie, Askcroft Reserve; Chief Michel Jack, Penticton Reserve; Chief Alexis Sceanse Smilkameen Reserve; Chief Louie Abel, Windermere Reserve; Chief Joe Hanna, Chalouse Reserve; Chief Charlie Squakam, Spences Bridge Reserve; Chief Francois Silpahan, Tappen Reserve.

COMMITTEE ROOM 368,

TUESDAY, April 5th, 1927.

The Special Joint Committee appointed to inquire into the claims of the Allied Indian Tribes of British Columbia, as set forth in their petition submitted to Parliament in June, 1926, met at 10.00 o'clock, Hon. Hewitt Bostock, presiding.

The CHAIRMAN: Gentlemen, what further evidence do you wish to hear this morning? Mr. Ditchburn is here, and I understand Mr. Found will be here shortly.

Hon. Mr. McLENNAN: There is one point, Mr. Chairman, I was not clear about in Mr. Kelly's evidence. As I understood it, he claimed that a purchase, such as that made by James Douglas at Victoria of a certain area of land, did not extinguish the title,—the aboriginal title to that land. Was I correct in that?

The CHAIRMAN: Senator (Hon. Mr. McLennan) would you like to put Mr. Kelly back on the stand?

Hon. Mr. McLENNAN: Yes, I would.

The CHAIRMAN: Mr. Kelly, will you take your place at the end of the table again?

Rev. P. R. KELLY recalled.

The CHAIRMAN: You have already been sworn.

The WITNESS: Yes. I do not think I said that.

By Hon. Mr. McLennan:

Q. I wanted to be clear on that point, Mr. Kelly.—A. It was the secretary who made that remark. A treaty is a treaty; it does not matter what the grounds are; nevertheless it is binding on both parties, and I think the treaty should speak for itself. We have the text of the treaty here, and it should be put before the committee. That will clear the matter up. Shall I read the treaty?

Q. Read the essential point of it.—A. It is not long; just a paragraph. This is a conveyance of land to Hudson's Bay Company—

The CHAIRMAN: I do not understand from what you are reading.

The WITNESS: A conveyance of land to the Hudson's Bay Company.

The CHAIRMAN: That has not as yet been put in the record; it will have to be filed.

The WITNESS: Yes, we will put it in the record. This is the Saanich tribe—south Saanich. (Reading):

> Know all men that we, the chiefs and people of the Saanich Tribe, who have signed our names and made our marks to this deed on the sixth day of February, one thousand eight hundred and fifty-two, do consent to surrender, entirely and for ever, to James Douglas, the agent

of the Hudson's Bay Company in Vancouver Island, that is to say, for the Governor, Deputy Governor, and Committee of the same, the whole of the lands situate and lying between Mount Douglas and Cowichan Head, on the Canal de Haro, and extending thence to the line running through the centre of Vancouver Island, north and south.

The condition of or understanding of this sale is this, that our village sites and enclosed fields, are to be kept for our own use, for the use of our children, and for those who may follow after us; and the land shall be properly surveyed hereafter. It is understood, however, that the land itself, with these small exceptions, becomes the entire property of the white people for ever; it is also understood that we are at liberty to hunt over the unoccupied lands, and to carry on our fisheries as formerly.

We have received as payment, forty-one pounds thirteen shillings and four pence.

In token whereof, we have signed our names and made our marks, at Fort Victoria, on the 7th day of February, one thousand eight hundred and fifty-two.

And then follows the signatures. I might say there are several other treaties, but they are all similar, except in the definition of the areas concerned.

The CHAIRMAN: Does the committee wish to have all the treaties put in the records?

Hon. Mr. STEVENS: I think all the treaties should be in the record. What others have you there, Mr. Kelly?

The WITNESS: They are all there.

Hon. Mr. STEVENS: You have these, Doctor Scott, have you not?

Dr. SCOTT: Yes; they are in the printed record.

The CHAIRMAN: Are there any other questions to ask of Mr. Kelly?

The witness retired.

The CHAIRMAN: Mr. Paull, you undertook to produce a letter the other day when you were giving your evidence. The clerk tells me it has not been produced.

Mr. PAULL: Unfortunately it has not arrived. The first day I was on the train I discovered the document was missing, and I wrote to my wife, but she, not being acquainted with my filing system, did not find it until Saturday. I got a telegram saying she had mailed it on Saturday; I will have it here on Thursday or Friday.

The CHAIRMAN: Does the committee wish to examine Mr. Ditchburn?

Hon. Mr. STEVENS: I think we should hear Mr. Ditchburn, Mr. Chairman.

The CHAIRMAN: Mr. Ditchburn, will you please take the stand?

WILLIAM ERNEST DITCHBURN called and sworn.

By the Chairman:

Q. What is your occupation, Mr. Ditchburn?—A. I am the Commissioner of Indian Affairs for British Columbia.

Q. You may be seated, Mr. Ditchburn. Is there any statement you wish to make to the Committee, or would you prefer to be questioned?—A. I think, Mr. Chairman, I would prefer to answer any questions that the Committee might wish to put to me, and I will try to answer them.

By Hon. Mr. Stevens:

Q. Mr. Chairman, I would like to ask Mr. Ditchburn a few questions. First, Mr. Ditchburn, would you mind giving the Committee a very brief statement regarding the evidence given in regard to fishing. The Indians complain of being deprived of their alleged rights in fishing. I do not ask for a long story, but just a brief statement from your experience and knowledge of the case?—A. Do you mean fishing commercially, or fishing for food?

Q. Both. There is a line of demarcation which is a little indistinct, there? —A. Well, Mr. Chairman and gentlemen, so far as fishing for commercial purposes is concerned, I do not think the Indians have any complaint in that regard. They are in a much better condition to-day than they were some two or three years ago, in view of the fact that very many Japanese have been eliminated from the fishing business.

Q. As a result of the Royal Commission of 1922?—A. I would assume so, yes. The Indians can fish now under what is known as independent licenses, just the same as the white man, and for a reduced license fee.

Q. That is commercial fishing?—A. Yes, that is for commercial fishing.

Q. And you say there is really no complaint about that?—A. No.

Q. I do not notice that there is very much made. Take the other, the real complaint they are making, that their ancient right of fishing to use the fish for food has been taken away, or unreasonably interfered with. Will you state your views on that?—A. Their right has not been taken away, but it has been restricted under the Fisheries Act. The Indians are permitted to take fish for food purposes under the supervision and according to the regulations of the chief inspector of Fisheries. In some instances, it is found that the Indians are not able to get their fish, owing to the kind of regulations put into effect.

By Hon. Mr. Murphy:

Q. Do you mean unable to get fish for food?—A. Yes, for food purposes.

By Hon. Mr. Stevens:

Q. That is, you mean that these regulations are unreasonable and too restrictive?—A. In some cases, yes.

Q. Will you point out in what particular they are such, in your opinion?— A. For instance, the Indians on the Capilano reserve at North Vancouver have recently had considerable trouble in view of the fact that one of their members was prosecuted for taking fish with a gaff. He was taking what is known as the chump or dog fish.

Q. And they objected to that?—A. Yes. The regulations on the Seymour Creek are that you can only take fish by means of angling.

By Mr. Hay:

Q. Are these regulations Federal or Provincial?—A. Federal regulations.

By Hon. Mr. Stevens:

Q. Do you mean to say that the Indians are not permitted to take the dog fish by gaffing?—A. Yes, there are only two classes of salmon that you can take by angling. You cannot take the dog salmon nor can you take the sock-eye with hook and line.

Q. Capilano Creek runs through the reserve?—A. Right through the reserve.

Q. There is a reserve at Seymour too?—A. Yes.

Q. And the river runs through that?—A. Yes, it runs through that.

Q. In your experience, have you had complaints of the Indians exceeding this right when it was reasonably administered, of fishing for commercial purposes, when they are ostensibly fishing for food?—A. Yes, I have.

Q. Is there any way that you can suggest that the Indian can be kept within bounds, providing this right is given to him with less restriction?—A. I have always looked upon it that if the Indian is given what he considers, or what may be considered reasonable regulations, providing for him taking his fish for food purposes, he is not so liable to violate those regulations which are put into effect.

Q. Generally speaking, the Indian will observe the regulations, except when he thinks they are unfair?—A. That is my opinion.

Q. And it is the injustice of the regulations that prompts him to violate them?—A. Yes, it is the sense of injustice.

Hon. Mr. STEWART: You are speaking to the whole of the Committee, Mr. Ditchburn. You are not addressing Mr. Stevens alone.

By Hon. Mr. Stevens:

Q. Speak a little louder, Mr. Ditchburn. Do you find any considerable amount of violation of the law by the Indians, taking it all over British Columbia?—A. Not a great deal, no.

Q. Not very much complaint?—A. No. There may be complaints that have not reached my attention. Possibly Mr. Found, when he comes here later on, may be able to give you some evidence about that.

Q. So far as you are concerned, you have not had very much complaint? —A. No.

Q. Can you recall any instances which would illustrate to the Committee the extent to which the Indians turn their right of private fishing into commercial fishing? I mean do they amount to anything?—A. They really do not amount to anything, no.

Q. Just trivial cases?—A. Yes, there are cases where an Indian will take a salmon, ostensibly for food purposes, and then go and turn it into a store for some provisions of some kind, and then he will be arrested and prosecuted.

Q. Rather petty stuff?—A. Yes.

By Mr. Hay:

Q. Do others offend in that way as well as the Indians?—A. Well, of course I am only talking about the Indians.

Q. But I am asking you?—A. I cannot say that, sir.

By Hon. Mr. Stevens:

Q. Perhaps just about the same as the Indians. That is an odd one, but it is not very general, I do not think. It is just petty?—A. Yes, by Indians.

Hon. Mr. GREEN: I do not think there is very much of that.

By Hon. Mr. Murphy:

Q. You were in the room yesterday, Mr. Ditchburn, and heard the witnesses who addressed the Committee, or gave evidence?—A. Yes.

Q. You heard one witness state that the Indians took objection to the manner in which Indian agents were selected, and also that those selected were not good men, did you not?—A. Yes.

Q. What have you to say about that?—A. I do not think their statement has any virtue in it at all. There would be no use of the Government appealing to the Indians to appoint representatives over them.

Q. But the witnesses who made those statements also stated, or he, for it was one of them, stated that in his opinion the Indians should be consulted in

the selection. What is your opinion in that regard?—A: It would not be practical.

Q. Why?—A. Because you would never get the Indians to agree. I think it was Chillihitza who said that, and possibly chief Johnny Chillihitza may have his own reasons for making a statement of that kind.

By Mr. McPherson:

Q. Do you not think that that refers to the man who was appointed Indian agent at Kamloops on one occasion who was a negro?—A. It is very likely in that particular instance it did.

Q. I think that is what he was referring to?—A. I will not say that, but it may have been that which he had in his mind. There was unfortunately a negro appointed Indian agent over the Indians in the Kamloops agency.

By Hon. Mr. Green:

Q. He did not make a bad agent?—A. A very good agent; a very respectable man.

By Hon. Mr. Stevens:

Q. He is a West Indian?—A. Yes, he is a West Indian, but the Indians did not like it.

By the Chairman:

Q. Is it not a fact that they prefer a white man as an agent, and not a man of colour, or foreign nationality?—A. Yes, there is not the slightest doubt about that.

By Hon. Mr. McLennan:

Q. No doubt an agent who is persona grata with the Indians gets on a great deal better than a man who is not.—A. Yes.

By Hon. Mr. Murphy:

Q. Certainly better than someone whom they do not like?—A. Oh, yes. Of course it is the duty of any man who is appointed to supervise Indians, to become persona grata with them, as far as is consistently possible. He should not become too familiar with them or he would lose the dignity of his office.

By Hon. Mr. McLennan:

Q. There was another suggestion made by the old Chief, that it did not make for smoothness, or for good relations, to send in the police to arrest an Indian; he thought he should be brought out by the Indians, by their own policeman, and given over to the white policemen rather than that the policemen should go in on their reserve. Now, is that a point in which, without any difficulty, their feelings could be considered?—A. I do not think there is anything in that. You cannot subject the carrying out of law and order to the Indian chiefs. That must be left with the police department.

Q. That is the King's writ must run everywhere?—A. Absolutely, yes.

By Hon. Mr. Murphy:

Q. You heard these witnesses also speak about the division of water, for irrigation purposes?—A. I did.

Q. Are you in a position to express any opinion on that subject?—A. I am.

Q. I mean, from the standpoint of the Indian, as to whether he has been unjustly dealt with, or whether the prevailing conditions in that regard could

be improved?—A. I may explain, gentlemen, that under the old regime, that is by the Colonial Government, it is quite evident that the Indians were considered to have water rights with their land. That is proved in the case of the Kamloops Reserve where in 1869, two gentlemen named Todd and Thompson applied for water licenses for property known as lots 1 and 2 on the top of Paul Mountain, almost inside of the Kamloops Indian reserve.

Q. Applied to whom?—A. Applied to the stipendiary magistrate of that day, who was Mr. Peter O'Reilly. They applied for a water license, and the water record was given to them, with this provision:

Subject to the prior right of the Indians.

Acting on that assumed prior right of the Indians, the Government of British Columbia issued a water license to the Kamloops Indians, giving them one day of priority over and above Messrs. Todd and Thompson, which is now known as the Harper Ranch. That carried on for some time, but the British Columbia Cattle Company, who are also now interested in that Harper Ranch, took exception to the ruling of the Board of Adjudication under the British Columbia Water Act, and they appealed against the ruling to the Court of Appeal of British Columbia, contending that the record issued to Todd and Thompson did not constitute a record for the Indians as provided for under the British Columbia Water Act.

Q. You mean, did not constitute a basis of right?—A. Yes, did not constitute a record. The Department of Indian Affairs, of course, opposed the appeal, but we lost out. The date of priority was then reversed, putting the Todd and Thompson record ahead of the Indian record.

Q. That is, the one day priority given to the Indians was cancelled?—A. Yes, we lost it.

By Mr. McPherson:

Q. Was the basis of that ruling because the Todd and Thompson right was issued by the Government?—A. Issued by the Government.

Q. That is the Todd and Thompson right issued according to the Act and not according to the reservation?—A. Yes.

By Hon. Mr. Murphy:

Q. Are you sure of that?—A. (No answer.)

By Hon. Mr. Stevens:

Q. I think it woud probably be this the Court did not recognize that the Indians had filed an application, while Todd and Thompson did?—A. That is it exactly.

Q. Although the Colonial Government said that the Indians had a prior right, the Indians not having applied formally did not have it, which seems to me pretty narrow reasoning.

Mr. McPherson: Under the British Columbia law, the right must be maintained by filing the application.

Hon. Mr. Stevens: Yes. At that time I doubt if there was such a regulation, but subsequently, there was.

Witness: Under the British Columbia Water Act, the interpretation of the word "record" is given, and it means some document filed with the Government of British Columbia.

By Hon. Mr. Stevens:

Q. What is the date of that Act?—A. This is the Act of 1924.

Q. But what was the original date of it?—A. It is a consolidation. The first Water Act was in 1897.

Q. That was long subsequent to the Kamloops incident?—A. Yes.

Q. That was before Confederation?—A. Yes, prior to Confederation.

Mr. McPherson: It was in 1869.

Hon. Mr. Stevens: It strikes me that in that case the Indians have a very just complaint.

Hon. Mr. Stewart: Mr. Ditchburn, in your opinion the Indians are correct in the statement that they have priority rights in these waters for irrigation purposes? I know the courts say they have not, but I am asking you if their contention that they have priority rights is correct?—A. The contention of the Indians is that they have always used the water with the land, and they could not use the land without having the water, in the dry belt.

By Hon. Mr. Stevens:

Q. Take the Okanagan district, in the bench land. The land is worthless without the water. They had the water on their land, and they used the two together, and the fact that they had not filed some formal application, I think, should not extinguish any right which they had by use.

By the Chairman:

Q. Was there any question about their not having the use of the water, in the trial?—A. I have not the evidence of the trial before me, and I do not think that was brought up. The Indians were using it, there is no doubt about that.

By Mr. McPherson:

Q. I wish that point made clear. I understand that the case was decided against the Indians, not because they had not an inherent right, but because they had not taken the statutory method of recording their claim?—A. There was no way of recording it.

Q. No matter about that, that was the way the decision went?—A. Yes.

Q. Now, has the department seen to it that claims are filed on all the reserves where there are water rights?—A. Undoubtedly, since then.

Q. So it cannot happen again?—A. No, you will remember that this was in the old colonial days, when there was no water right.

Q. There is no chance of the Indians losing another lawsuit through the same oversight?—A. No.

By Mr. Hay:

Q. How much territory is affected by this one claim that has been lost, that one water right?

By Hon. Mr. Stevens:

Q. To what degree in that Kamloops reserve—that is what Mr. Hay means —to what degree are they affected? Have they lost all their water?—A. No, they haven't lost it all. By a subsequent record we got the right between the British Columbia Cattle Company and the Department of Indian Affairs so that we go fifty-fifty on the water in Fall Lake. That was arrived at recently.

Q. Does that give them ample water for the cultivation of that reserve?—A. No, neither party has got enough. Neither the British Columbia Cattle Company nor the Indians have enough.

By Hon. Mr. Green:

Q. Are the Indians using it up to their full capacity on that reserve?—A. Yes.

By Hon. Mr. Stevens:

Q. What would it cost to put in a pumping plant, and pump the water for irrigation out of the North or South Thompson?—A. We figure it about $12,000 to irrigate about 75 or 80 acres.

By Hon. Mr. McLennan:

Q. The plant would cost that?—A. Yes.

By the Chairman:

Q. This water question is a very complicated matter. When you say the Indians get fifty-fifty with the ranching company, does it mean that they get enough water to raise a crop, or merely enough water to induce them to start a crop, and then not have enough to finish it?—A. It is not enough to raise crops in the manner in which they are cultivating at the present time. If they would cultivate more on the community system, not in seperate little holdings, they would get much better results and their water would carry them along much farther than it does at the present time. We have been trying to induce the Indians to plot all their potatoes together, and their alfalfa together, each man having his holding in this community division, and then their water would go much farther than where they have their crops scattered.

By Hon. Mr. McLennan:

Q. Are there other cases at all similar to this Kamloops one?—A. The loss of priority in the Okanagan has affected the Indians considerably.

By Hon. Mr. Stevens:

Q. Which one is that?—A. That is the Okanagan Indians; that is the Indians from Spallumcheen to Osoyoos.

By Hon. Mr. McLennan:

Q. Is that the district that we heard of yesterday where the Indians were not properly using their orchards?—A. Yes. I would like to just refer to that. Mr. Stevens mentioned the fact yesterday that the Penticton Indians were not cultivating their land up to the extent which it was possible to cultivate it. I have to say that I cannot agree with Mr. Stevens in that regard. I believe every acre of the Penticton reserve is under cultivation that is possible to be irrigated.

By Hon. Mr. Stevens:

Q. How long since?—A. Has been for the last ten years.

Q. Is that the reason they are not cultivating the rest of it?—A. That is the reason they are not cultivating the rest of it.

Q. There is a lot of it not cultivated?—A. There is undoubtedly a lot of it not cultivated, but there is not water there to cultivate it with.

By Hon. Mr. McLennan:

Q. Could water be brought there?—A. Possibly Mr. Stevens is referring to that large tract of land that is on that side hill just opposite Penticton?

By Hon. Mr. Stevens:

Q. Yes. That takes in the reserve?—A. It is impossible to put water on there economically. The Government of British Columbia took that into con-

sideration when I was endeavouring to try to arrange an exchange of the cut-off in that reserve. The Royal Commission on Indian Affairs recommended the cutting off of over 14,000 acres. Included in that 14,000 acres there are about 2,600 acres of that large flat that you see from Penticton. The Penticton Board of Trade made a suggestion four years ago that the cut-off should be amended by running the line further south to a stream called Shingle Creek, and taking in the whole of that flat up there, leaving the rest of the cut-off to the Indians for pasturage and range for their cattle. The matter was taken up with the Minister of Lands, the Hon. Mr. Pattullo, and he put his engineers on that land to see if it was possible to bring water in there from Trout Creek, the same as is done at the Dominion Experimental Farm, which is somewhat further north. So far as the exchange was concerned, I was perfectly willing to have that exchange made instead of the original 14,000 acres cut-off first recommended by the Commission. Mr. Cleveland, who has control of water rights, reported that it was not economically feasible to put water on that land for irrigation purposes, and consequently it was dropped.

Q. That is the bench land?—A. That is the bench land. A great many people see that up there and they seem to think it is lying there and the Indians are not doing anything with it.

Q. What about down in the flat, along the river? Have they any orchards in there the same as the rest of the district?—A. Oh, yes, if you walk right down to the village you will see that the Indians have some very good orchards down there right back of Penticton. Down along the river bottom it is grass land for their cattle. I can truthfully say that so far as the Penticton Indians are concerned they are utilizing their land to the fullest extent possible.

Q. In the flat?—A. In the *flat.*

By Hon. Mr. McLennan:

Q. Where they can get water they are utilizing it?—A. Yes; they must have the water.

By Hon. Mr. Murphy:

Q. What about their orchards being a menace to the adjoining orchards; that was mentioned yesterday?—A. I do not think there is very much in that. This Department has an officer known as the Inspector of Indian Orchards, whose duty it is to go round to all—

Q. You mean your Department has?—A. In our Department.

By Hon. Mr. Stevens:

Q. Is that Wilson?—A. No, Wilson is dead; his name is Anderson.

Q. Wilson was for a while?—A. Yes, he was our officer. He goes around and he teaches the Indians how to spray their trees. We supply them with spray pumps, show them how to prune trees, and to keep their orchards generally in much better condition.

Q. But there has been a great deal of complaint on that ground for many years back?—A. Yes.

Q. I presume you are getting it into much better shape now, but there was complaint years ago?—A. We have had that policy in existence for the last twenty years.

Q. I know you have, but without very much success?—A. And it is bringing out good results.

By Hon. Mr. Green:

Q. Were not the complaints largely from isolated fruit trees, and not so much from orchards from which they expected to make money?—A. Individual

Indians grow some scrubby trees around villages and the fruit is not worth very much.

By Hon. Mr. Murphy:

Q. Is the matter of water legislation the subject solely of provincial jurisdiction, or jointly provincial and Dominion jurisdiction?—A. It is wholly provincial.

Q. At the present time it is wholly provincial?—A. Yes. You will see that in dealing with any of these old water records, or in making an appeal to the Courts, we must deal under the British Columbia water rights.

Q. In conjunction with the British Columbia Government?—A. Yes.

Q. You heard the witness yesterday urge that there should be more intensive education, I think he called it, of the Indians with regard to agriculture, fruit growing, and so on. Have you anything to say to the Committee on that point?—A. I think it is a very good suggestion. It is the policy of the Department at the present time. The great difficulty is that the Indians do not seem to appreciate the efforts that are put forth in their direction to benefit by this education.

By Hon. Mr. Stevens:

Q. Could you give the Committee an idea of some of those efforts in the direction of intensive education?—A. Well, as I explained a little while ago, we have a special man going around the province, throughout the agricultural districts, teaching the Indians how to grow fruit.

By Hon. Mr. Stevens:

Q. One man?—A. One man, yes.

By Hon. Mr. Murphy:

Q. Over the whole province?—A. Yes. Of course, through certain sections of the province there is no use in teaching at all; on the coast district, for instance, which is not an agricultural district.

Q. Has anything been done in the way of congregating the Indians at special points and giving them what is generally understood as a course of education in agriculture, or anything of that kind?—A. At the schools?

Q. Yes.—A. At our residential schools in the interior we teach the children the rudimentary principles of agriculture.

By Mr. McPherson:

Q. Is there any institution similar to the agricultural college in the prairie provinces, where they can attend and learn fruit culture?—A. There is a provincial college. There is one man that we almost put through with a special course, a man named Harris.

By Hon. Mr. Stevens:

Q. He was an Indian?—A. Yes.

By Mr. McPherson:

Q. Can the Indians go there after they have obtained high school or ordinary school education?—A. I do not think the Department has ever turned down a worthy case where we thought we would get results.

By Hon. Mr. Murphy:

Q. That is, a promising man would get a chance?—A. Yes.

Q. Has the Department done anything in the way of providing demonstration plots which we have elsewhere?—A. Like experimental farms, as it were?

Q. No; a farmer is picked out in a district—in Cape Breton there are four places—fertilizer is given, and this man grows a rotation of crops close to the road so that everybody can see the advantage of it?—A. Nothing very much in British Columbia along that line, not so far.

Dr. SCOTT: I would like to direct Mr. Ditchburn's attention to the fact, so that he might get the evidence on the point, that instruction takes place at our residential schools. Take the Kamloops school, which is in the dry belt—all the Indian pupils being recruited from the dry belt,—we have an elaborate system of irrigation where the boys become acquainted with methods of cultivation under irrigation. We endeavour to carry out that system at all our industrial schools; have the tuition follow the line of the after life of the pupil.

By the Chairman:

Q. With regard to this question of aboriginal title, have you anything to say as to what you have heard expressed by the Indians?—A. Well, as to the merits of the question, of course I am not prepared to argue, but I do know that it is a canker in the minds of the Indians to-day. If it were removed, either by proving that there was a claim, that they had an interest in the lands of the province, or proving to them that they had not, it would go very far towards more satisfactory working out of the administration of affairs by this Department.

Q. That applies to the whole province, does it?—A. All over the province.

Q. With the tribes all over?—A. Generally, yes. There are some tribes that are not so much interested in it as are others. The tribes in the northern interior, up through the Cassian country, and over to the east of the Rocky Mountains, or up through the Fort St. James district, do not bother about it at all; we never hear a peep out of them.

Q. Then you heard Chief Chillihitza's evidence yesterday about that water on the Nicola River? He was complaining that the provincial Government had allowed people in the Okanagan to take water that he thought ought to come down to the Nicola Reserve. Have you heard anything about that?—A. I could not understand just what he was alluding to. I thought he was alluding to the Guichon Creek trouble. At the Guichon Creek, which empties into the Nicola River, the Government Water Board have allowed a diversion by Tunket Lake.

Q. Into another watershed?—A. At the top of the watershed, the water which would otherwise be running down to the west into Nicola River, they allow this water to be diverted; known as the Laighton diversion. If that is what he had reference to, I cannot see that it is doing the Indians any harm, provided a proper date is set for closing off that diversion.

Q. Well, of course, Colonel Pragnell would know a great deal more than you do about that?—A. He would not know any more. Just what Johnnie Chillihitza had reference to, I could not say. Water going over the divide into the Okanagan, of course that is another divide altogether.

The CHAIRMAN: I know that Mr. Frank Ward has told me that he thinks the Department in British Columbia treated him very badly over that, and I thought it was the same thing with the Indians.

By Mr. Hay:

Q. Do the young people still harbour the thought that the land ownership will ultimately be vested in them?—A. Do you mean the land on the reserves, or the aboriginal title?

Q. The aboriginal title.—A. They read as they run of course, and their idea of the aboriginal title is much more exaggerated than that of the old people.

Q. Much more exaggerated?—A. Yes.

By Hon. Mr. Stevens:

Q. How long have you been in charge of the Department?—A. Close on to seventeen years.

By Mr. Hay:

Q. What would be, in their mind, the commercial value of the ownership?—A. Well, of course, they know that the Indians east of the Rocky Mountains are treated differenty to the Indians in British Columbia.

By Dr. Scott:

Q. You do not mean that they are treated differently; you mean they were treated differently with respect to the treaty?—A. Yes, that is it. So far as any benefits are concerned, the Indians of British Columbia are getting just the same as the Indians east of the Rocky Mountains.

Q. With the exception of annuities?—A. They are not getting annuities, or what is called "treaty moneys."

By Mr. Hay:

Q. Are they thrifty, or is the money usually spent?—A. As a rule they spend it before they get it.

Dr. Scott: There is great thrift among the tribes. A man with five in a family gets $25 a year. He usually spends it immediately to buy something for his family, or he has debts at the store and goes and pays them. Sometimes it is hypothecated, but it is of no practical benefit financially. The annuities were a means of compensating for the individual rights; that was the only way in which they could be compensated, by a money payment.

By Mr. Kelly:

Q. I think I heard you say that the Indians did not appreciate all the educational advantages put at their disposal?—A. Yes.

Q. Are you aware that there are long waiting lists at the schools?—A. I know that, but, I think, Mr. Kelly, if you will make a visit to our schools you will find that we cannot keep a boy or girl at the school after they are fifteen years of age.

Q. You are referring to what grade of school?—A. I mean the residential school, where it is possible for the children to get a splendid education. Their parents do not desire to keep them in long enough in order that they may complete that education.

Q. Is it not a fact, though, that for instance in the Chilliwack, we have a long waiting list?—A. Yes, I am aware of that.

Q. And the same thing applies at Port Alberni on Vancouver Island?—A. Yes.

Q. And the school at Ahousat on the west coast is filled?—A. Our schools are all filled, but unfortunately they do not stay long enough to get their education completed.

Q. But there is a regulation that every Indian boy and girl stays there until their eighteenth birthday?—A. The law says we can only compel them to go to school until they are fifteen.

Q. But the Indian regulations demand their attendance up to eighteen years; is that not a fact?—A. Yes.

Q. And it has been lived up to almost to the letter of the law, all the way through?—A. No, it has not; not since the law was changed.

Q. Are you prepared to say that in the majority of cases they leave before they are eighteen?—A. Yes, I do.

By Mr. McPherson:

Q. The provincial law calls for fifteen years?—A. Yes; that is compulsory education.

Q. And they only stay there until they have complied with the law?—A. Yes. These are residential schools, and we clothe and feed and educate them, and we consider that if a child will stay there, he will receive a very fair education—all the education we can give them.

Q. Would you blame the parents or the children for leaving?—A. I would blame the parents; it is on the parents' side.

By Mr. Kelly:

Q. You said some of the tribes were not interested in this question of the aboriginal title?—A. Not to any great extent.

Q. The point I want to ask is this; is it not true only where they are far away from the centres of civilization?—A. That is right.

Q. Where they are not in contact with civilization and do not bother about it at all?—A. That is right.

The witness retired.

WILLIAM A. FOUND: called and sworn.

The CHAIRMAN: Have you given your name to the reporter, and your occupation?

The WITNESS: Yes. I am the Director of Fisheries.

The CHAIRMAN: Do the committee wish to ask Mr. Found any questions about the fishing?

By Hon. Mr. Stevens:

Q. You were not here and did not hear the evidence about fishing, did you, Mr. Found?—A. No, sir.

Q. Briefly, a complaint is made that the rather rigorous enforcement of the regulations by the Fishery Officers of the Dominion deprived the Indians of the right to fish for food. That is what they complain of, and they cite several cases. For instance, they cite a case on the Capilano, where a man was arrested and fined for fishing dog salmon, which is rather inconceivable to me. In another case an Indian was arrested near Nanaimo somewhere, for spearing fish for food, and three old people—this was rather a queer case on the west coast of Vancouver island where a stream was running in (I have forgotten just where it was)—but three old men, one of whom was blind, had put out a little net, nothing like the regular size, and were catching a few fish. They were arrested and fined, and their canoe destroyed, and the net confiscated and burned. I do not know whether they were fined, but anyway their apparatus was taken from them and destroyed. Then there were some other minor cases. —A. Mr. Chairman, I sometimes wonder if the Indians themselves, and the people generally, have a conception of the importance the protection of the fisheries of British Columbia is to the Indians of British Columbia. I happened to be here at the opening sessions, and I noted with interest that there are somewhere about 26,000 Indians in British Columbia—

Q. Twenty-three thousand.—A. —and I think it may be safely said that 4,000 of these secure the major portion of their earnings from the fishing indus-

try. Last year there were 3,352 Indians who received fishing licenses out of a total of 11,750 licenses.

Q. That is, male fishermen?—A. Yes, fishermen. In addition to that number, all of those familiar with the conditions in British Columbia know there are a large number of Indian women who find employment in the canneries. Now, notwithstanding the need for adequate fishery protection, it has been the policy, and is the policy of our Department, to co-operate as fully as we feasibly can, with the Department of Indian Affairs, to make it easier for the Indians in the more remote sections, where it is necessary and compatible from a fishery standpoint to obtain fish for food purposes. That is not only our policy, but I have not the slightest doubt that Doctor Scott will bear me out when I say that the two Departments seek cordially to carry out that policy and make it effective. To that end, in the more remote sections of the country, a very considerable number of permits are issued to the Indians, to enable them to take fish by means which no one else is allowed to use in any season of the year. When it came to Capilano; it seems atrocious that a man is gone after for spearing dog salmon, but that does not tell the story, and those who are familiar with the Capilano know it is the most noted spearing stream of British Columbia, and know it is a stream that abounds with steel-heads, the only fish which will rise to a fly. It is a little stream which you can almost walk across anywhere. The whole interest in the way of angling clubs in British Columbia is well-known and they are crying out to have that river afforded adequate protection. It is not known only in British Columbia, but all over Canada, all over the continent, and all over other continents as well.

Q. The complaint was the spearing of dog salmon.—A. I was coming to that. The people desire to have that river protected. Now, if you are going to allow spearing for salmon in a river in which there are these other varieties of fish, and where there are not too many chump salmon, and where these other lines abound—and I need not press this—it can be readily seen that all the other fish are in jeopardy. There are other fisheries around Capilano and the surrounding places, where fishing is accessible, and there is no particular need for the Indians fishing in the Capilano. The Indians are placed on the same basis there as the white men.

Q. The Indian Reserve is there?—A. Yes.

Q. It is one of the old reserves, and there are quite a number of Indians living there all the time?—A. Yes.

Q. Can you see any objection to allowing an Indian to spear for chump and dog salmon in the reserve section of the river?—A. Not in any section, if you have somebody else beside the Indian there to see that none but the chumps are hurt, but when the public know the danger which is there, you have another situation, and to meet the public interest it was felt, and I still feel, that the public sympathy of those who know the situation is behind the principle that it is not a desirable thing to allow spearing in a river of that kind.

Q. There is no objection to an Indian fishing freely any time of the year by troll or otherwise, in the harbour?—A. Not at all. There is no interference with the reserves; I mean, so far as that is concerned; no one else can go on their reserves without their permission. It is simply a matter of placing the Indians on the Capilano on the same plane as everybody else. With regard to the Cowichan; there has been difficulty with that stream. I think we have overcome it to a considerable extent. We have been seeking to come to the point, that no commercial fishing is permitted on the Cowichan, but the Indians are allowed to net salmon for their own food purposes.

Q. Is it possible to make an arrangement with the Indians on the Capilano so that they can take only dog salmon, or hump-backs, and not take the sporting fish out of season?—A. In the light of experience, I do not think the thing is

feasible, Mr. Chairman; that is, the other fish are always in jeopardy, and are likely to be taken. If there was any considerable run such as there is at Cowichan, it would be a different matter.

By Hon Mr. Green:

Q. In other words, it is hardly possible for an Indian or anybody else to know when he is striking a fish whether it is a dog salmon or what it is?—A. It depends somewhat on weather conditions to know, but the Indians are not different from most people who are given permission to do certain things, and if permission of a certain kind is given, there usually is but one result. Moreover, the amount of chump salmon which would be taken is not an important factor, I submit, to the Indians there, while the protection of that river is an important factor for British Columbia. It is a river that is drawing people to British Columbia from long reaches.

By Hon. Mr. Stevens:

Q. Your argument is that the Indians, even if deprived of that right on that river, will not suffer as a result?—A. Within easy reach roundabout he can readily procure the amount of fish he needs for food purposes.

Q. And your further argument is that you think it would be hopeless to make an arrangement with the Indians which they would observe, whereby they would take only— —A. Chump salmon.

By Hon. Mr. McLennan:

Q. So far you have only directed your attention to this very precious river? —A. Yes.

Q. What about other rivers elsewhere in the province?—A. In the various parts of the province, permits are issued to the Indians to take fish for their own food purposes at any time of the year, by spears or by other methods. We try to keep them down from doing that, as much as we can, but after looking into all the instances where these are regarded as being desirable, it will be quite readily realized what it means to take salmon which have run long distances to their spawning ground, and are on the point of spawning,—

By Hon. Mr. Stevens:

Q. The old chief complained about the upper country; I suppose he had reference to the streams emptying into the Shuswap Lake. Years ago they used to be thick with salmon, but his argument is that the salmon never returned.—A. Quite so.

Q. And his argument is that there is no injury to the fisheries if the Indian took these salmon for food.—A. Unfortunately, so far as the Indians are concerned, and so far as everybody else is concerned, since 1913 there have been very few salmon above Hell's Gate.

By the Chairman:

Q. Yes, and you know the reason for that?—A. Quite so.

By Hon. Mr. Stevens:

Q. Chief Johnny complained that if that were stopped——A. For some years there was no fishing allowed by the Indians in the Upper Fraser. That was during negotiations for the treaty with the United States which contemplated such, but for some years past, permits have been issued on the upper Fraser to take fish for food purposes. Considerably over 200 permits have been issued in that upper country during the past year.

By the Chairman:

Q. Is it your contention that no Indians should be allowed to take fish without a permit in the south Thompson, the Bonaparte, or the Nicola rivers?—A. Yes, but they are issued permits free.

Q. By whom?—A. By the Fishery Officer. If such were not done, it would be difficult to safeguard the situation. Metal tags are issued which are attached to the nets, and if this were not done, others would set nets there, and it would be impossible to control the situation.

Q. It is not only a question of nets, but also a question of spears.—A. They are given permits for spearing purposes as well. It is desirable to do that, I think, and is a good thing, not only from the standpoint of control, but for the records.

Q. Is it not a fact that, in the upper reaches of the Fraser, fishing is increasing now since the river has recovered from the obstruction which was placed there by the Canadian National Railway, when it was being built?—A. Fish go back to the spawning beds in which they were bred. That has been very well demonstrated, and we are succeeding in getting some runs into the upper Fraser by consistent stocking of certain fish in the upper Fraser, in certain areas. During the past year we have had bigger runs of fish to the upper Fraser than since 1913, which is one of the most encouraging things we have had, and shows what can be done if we can get an international coöperative effort. Last year, the Fraser river produced—and I speak subject to correction—about 101,000 cases of salmon, possibly 120,000; I think it was 81,000 on our side, and about 40,000 on the United States side; that is, sock-eye salmon. In 1913, the pack of sock-eye salmon was two and a quarter million. That shows the capabilities of the Fraser river.

Q. Two million cases?—A. Over two million cases of sock-eye alone. The river is as good as it ever was if we can build it up. What it would mean to the Indians to have the river built up is fairly obvious.

By Hon. Mr. Murphy:

Q. You have not addressed yourself to the cases mentioned by Mr. Stevens. Perhaps you have no information about them.—A. I do not recall them. I would be inclined to think that in Nanaimo it was another instance where spearing was carried on where it was not permitted.

By the Chairman:

Q. Can you explain, Mr. Found, why an officer of your Department would administer the law in the way stated?—A. Mr. Chairman, I am inclined to think this is an extremely ex parte statement, and I would like an opportunity to look into it.

Q. You do not know anything about it at all?—A. I do not recall the case. If a man is found breaking the law, he would be dealt with as any law-breaker would be dealt with, by a fishery officer but we are not without experience of Indians breaking the law.

By Mr. McPherson:

Q. Would this case not be the result of carrying out the letter of the law by the fishery officer?

Hon. Mr. Stevens: The complaint really is that his action was too drastic.

By Mr. McPherson:

Q. Yes, admitting that the law had been broken, the complaint really is that the circumstances should have been considered and discretion should have

been used. The complaint is that the officer used no discretion?—A. Well, Mr. Chairman, I do not think I can let that go.

Q. I do not think that is an improper way to state it, that the fishery officer has no discretion if the law is broken?—A. When I said I could not let that go, I used perhaps the wrong words. I meant, I could not let the impression go that the fishery officers act without any discretion in dealing with violations. They are instructed to exercise discretion. But of course, the man who is penalized usually thinks no discretion is exercised.

By the Chairman:

Q. Have you got written instructions to give out?—A. To our offices, yes.

Q. It might be a good thing if you would file a copy of those instructions, with the Committee?—A. These are not the only instructions the officers receive. We have what we call our book of instructions that has been carefully prepared in the light of a good deal of experience, and officers are also being instructed from time to time in the light of incidents that arise.

By Hon. Mr. Murphy:

Q. Speaking from your own experience, what satisfaction do your officers out there give?—A. I think, on the whole, it can safely be said that our officers show discretion and intelligence in dealing with matters. We sometimes have to employ people for a short time who are called fishery guardians—they are not the regular fishery officers—who may not always exercise as much judgment as a regular fishery overseer would exercise, but he reports to the fishery overseer, and as I said a little while ago, we try to have the officers of our own department and the officers of the Indian Affairs Department keep together as much as they can, in dealing with all difficult situations. That is our general course.

Q. Is there any difference in fishing conditions in the Fraser or Thompson Rivers as compared with the rivers in New Brunswick?—A. Not very much.

By Hon. Mr. Stevens:

Q. Let me read one or two of the claims of the Indians, and then, if you will, give us briefly your answers, Mr. Found. This is their statement of claim, appearing on page 67 of the record of Wednesday, No. 1.

> The Indians wish to claim the right to catch fish in all rivers, lakes, and tidal waters of the province without permit and without any limit, with the explicit understanding that the fish will be used by the Indians for food only.

That is the first one. What have you to say to that?—A. Our Department could not concur in that unqualified claim.

Q. From your experience what would be the result if that were granted? —A. We would be unable in many instances to afford the fisheries the protection they need, and it would mean that the commercial industry would have to be curtailed or the whole industry would suffer.

Q. Then they go on:

> They wish to be allowed to fish or troll for salmon without license in all tidal waters of the province, and to be allowed seining licenses, both drag seine and purse seine, at half the prevailing fees.

—A. When an Indian engages in competition with the white man in ordinary commerce, I see no very good reason why he should not be on the same basis. He is given the same license as they are for all kinds of fishing, if he applies for it.

Hon. Mr. Murphy: You make no distinction.

By Hon. Mr. Stevens:

Q. You would not consider it fair or wise to give them a lower rate of license fee than the white man?—A. In the commercial fishery, I see no reason for it. As a matter of fact, our fees are all nominal. It is not a matter of very great revenue.

Q. What is the drag seine license now?—A. $20 a year.

Q. Then they say next: "They desire that the Indians only should be granted seining licenses to catch fish at the mouths of streams or rivers which flow through Indian reserves." Now, that is not quite clear, whether the mouth of the stream is in the reserve, but presuming it is, what would you say to that?—A. There is no ownership in tidal waters. In every instance where drag seining is carried on adjacent to an Indian reserve, the Department makes it a condition that only Indians shall be employed—no matter who has the license—in the operation of the seining.

Q. You make that condition now?—A. We make that, and have made that condition for years.

Q. And that is carried out?—A. That is carried out.

Q. The next one is:

> They desire that in all fishing districts certain waters be reserved for the exclusive use of Indian bands or tribes in those localities.

—A. That, I assume again, is for commercial purposes?

Q. Yes, I presume so. That is where there is an area and the right is given over that area?—A. There is a public right of fishery in the tidal waters, and the Federal Government is not in a position to grant exclusive rights to anybody.

By Hon. Mr. Stewart:

Q. Mr. Found, would there be any serious harm, or any serious objection to giving the Indians preference under the fishing laws? If they did not wish to take it, then the license could go to others?—A. Well, I am not quite sure what preference could be given.

Q. The preference of taking out the license in those particular areas; that is, that they should be given the right to take them if they desired to do so?—A. They are given the right, but the same right applies to everybody.

Q. But only so far as application is made. The Indian comes on a territory with the white man, and if he does not happen to be the first applicant, he does not get that consideration?—A. Oh, I see what you mean. This will be a drag seine license now that you are dealing with. That is for a fixed location.

Q. It is for a certain location within the vicinity of these Indian reserves, in tidal waters?—A. The only kind of fishing for which there can be a permanent location is a drag seine. Assuming that this table is the sea, and this is the shore where I am, one end of the seine is attached to the shore, and they go away around with the other end, and drag the net in on the shore. That is a fixed location. All other fishing is afloat. Now then, what I said a moment ago is that while licenses are issued to applicants who apply for them, in all instances where the fishing is carried on, opposite Indian reserves, we make it a condition that the licensee shall employ Indians to operate the seine.

Q. What I mean is, that you do not give the Indians priority?—A. We have not got the authority to do so.

Q. I quite understand that, but I want an answer to this question; the Indian may be an applicant for that license, to use that net, but if he does not happen to be the first applicant, some one else gets ahead of him?—A. There may be ten, sir, operating there at different times. A man cannot stay there day and night, for instance. Take a place that is known possibly to the representatives of the

Indians that are here: the Nimpkish—well now, that is not a good illustration, because it is nearly all purse seining there. There are some ten seines operated about the mouth of that stream. Unless we are to get legislation whereby we can take away a public right—supposing we did grant a license to an Indian, if a white man comes along, and applies for a license there too, he is logically entitled to it. All we do is to issue a man a license which authorizes him to operate a certain kind of net at a certain place. If it is a drag seine, or if it is a purse seine, he gets a license to operate in the coastal waters of British Columbia.

By Hon. Mr. Stewart:

Q. Where it is fishing from a boat, your license is not limited?—A. It is usually issued for a general district, if they want it transferable without a fee.

By Hon. Mr. McLennan:

Q. It is this point which I think Mr. Stewart has made. Could the Indians up to a certain time, get the priority in applying for and receiving the licenses, such as they take out?—A. Let me try to make the situation clear. Supposing there is an area here in which drag seining will be carried on. Drag seining may be carried on between certain dates. Now, there may be several people who want to carry on drag seining there. If they do, licenses are given, but we will have to, keeping in view the amount of fishing that is carried on, determine the conditions under which that fishing may go on. For instance, he may have a limitation, a weekly closed time, and we may have to lengthen that closed time very considerably. If there is one seine operating there, we might have a close time of 24 hours; if there are 20 seines operating there, we might have to have a close time of 72 hours, and so on.

By Hon. Mr. McLennan:

Q. That is a time during which they must come out?—A. During which time all fishing must be forbidden.

By Hon. Mr. Stevens:

Q. This is the contention that prompted Mr. Stewart's question:—

> They, the Indians, desire that in all fishing districts, certain waters be reserved for the exclusive use of Indian bands or tribes in those localities.

Would you see any objection to that?—A. Yes, sir. It cannot be done. There is a public right of fishing in the tidal waters these people want us to reserve to them specially, certain waters in which they, and no one else will be permitted to fish for commercial purposes.

Q. Now, Mr. Found, some years ago—I think it is not followed now—you used to allocate to a cannery, a large area, miles of territory, or a whole inlet, or a portion of an inlet. You do not do that now?—A. No.

Q. You used to?—A. Yes, it used to be done.

Q. That is what the Indians I presume are asking for here?—A. That is what they apparently want to have done. That is, certain places located which will be given to them.

By Hon. Mr. McLennan:

Q. But the draw net involves the use of the shore?—A. It does, and should be allowed no where if there was any other method of fishing. It is an innocuous method of fishing, if there is any other method that is feasible. You can run a net out across the mouth of the river, and close the whole mouth of the

river up, unless we are watching there, and so we are restricting it as much as we can.

Q. You are not allowed to close the whole mouth of the river?—A. No, sir. I mean that as a possibility in exercising that kind of fishing, and it is therefore a kind of fishing that everywhere where there are salmon fisheries that is sought to be done away with. We are restricting it to areas where no other method of fishing would be feasible.

Mr. DITCHBURN: I think, Mr. Found, what the Indians have in mind is the fact that the Government of the United States has set aside a certain area absolutely for the Indians for fishing purposes, off Annette Island, near Alaska?

The WITNESS: Yes, that is a condition of the United States law.

Mr. DITCHBURN: They have the absolute right for half a mile from the shore for all fishing.

Mr. KELLY: Three miles.

Mr. DITCHBURN: Three miles is it? Well, they have that right.

Hon. Mr. STEVENS: In a given area?

Mr. DITCHBURN: Yes.

By Hon. Mr. Stevens:

Q. Why could we not do this, Mr. Found, in British Columbia, and I ask the question so that you can state the precise reasons why it is not feasible? Why could we not give the Indians an area precisely the same as we used to give to a cannery, or to one of the big fishing concerns. I am not suggesting that we go back to that generally, because that was abandoned, I understand; but why should we not make an exception of the Indians and give them say, a certain area, like certain inlets or stretches of the coast?—A. It could not possibly be done, as a matter of Government policy—if it were considered a wise policy. Under the Fisheries Act, wherever an exclusive right of fishing does not already exist by law, the Governor in Council may grant leases.

Q. What exclusive rights exist now?—A. There are no exclusive rights in tidal waters.

Q. None at all? Are they all done away with?—A. They are all done away with.

Q. But they did exist for many years?—A. They used to be granted exclusive privileges.

Q. That is what I mean. And none are granted now?—A. No.

Q. But there is no reason, other than the general reason you have given, why the Indians should not be given such an area? There would be no physical difficulties about supervising it, and so on?—A. No, none greater than the existing difficulty. In fact, it would make it easier if we could give an exclusive privilege of fishing in any area to any individuals. These individuals then, would only have to be watched; they would watch all others.

Q. Yes. There does not seem to be any other difficulty in my view, to prevent granting it. Here is another point they make:—

> That salmon and herring seining licenses similar to those which in the past have been issued to resident whites will in the future be available to Canadian Indians, in their own names.

Is that the case now?—A. Yes, they are available now.

Q. That is in practice now?—A. Yes.

Q. That is about all there is on fisheries in this claim. Have you the fishing regulations re Indians there?—A. I have the fishing regulations for British Columbia. May I confirm a statement I made a little while ago on the license

fee, if you will permit me a moment. I was right when I said $20, for that license.

Q. You might give us a brief summary of the fishing regulations as they relate to Indians?—A. You want the gist of them.

Q. Yes, do not read every word of the regulations, but an outline of them

By Hon. Mr. Murphy:

Q. First of all, are there special regulations affecting Indians only?—A. No, but there are conditions in the regulations that affect Indians only; for instance, the regulations provide that there shall be no fishing otherwise than by angling, above tidal waters. But an Indian may at any time, with the permission of the chief inspector, catch fish to use as food for himself and his family, but for no other purpose. The chief inspector shall have the power, in such permit, to limit or fix the area of the waters in which such fish may be caught; to limit or fix the means by which, or the manner in which, such fish may be caught; and to limit or fix the time in which such permission shall be operative. An Indian shall not fish for or catch fish pursuant to the said permit, except in the waters, by the means, or in the manner and within the time limit expressed in the said permit, and any fish caught pursuant to any such permit shall not be sold or otherwise disposed of, and a violation of the provisions of the said permit shall be deemed to be a violation of these regulations.

Q. How do you allow Indians to catch fish above tidal waters?—A. He is allowed to catch them by a spear, and by different methods, depending on the local condition.

Q. Are you aware of the prosecution of this Indian in Capilano, last year?—A. Quite.

Q. Was it not a fact that the Indian Department took action to defend this Indian which the Fisheries Department was prosecuting?—A. That does not change the situation.

Q. That fact existed. These two Departments were conflicting in this case?—A. (No audible answer).

Hon. Mr. Stevens: That would not make any difference; they were both doing their duty.

By Hon. Mr. Murphy:

Q. What other regulations apply to the Indians?—A. No one shall fish with nets, only for commercial purposes in—I need not name the places—except with a permit provided free. The Chief Inspector may grant a free permit to Indians resident in the Indian Reserve adjacent to the Guichon River, etc., which will authorize them to use salmon gill nets during the time the chump salmon are running, for the capture of chump salmon for food for themselves and family.

By the Chairman:

Q. Those permits are only issued by the Chief Inspector?—A. They are issued by all our fisheries officers, all over the country.

By Hon. Mr. McLennan:

Q. It would not be onerous for an Indian to get that permit?—A. Oh, no, sir; they are issued by the people on the spot.

By Mr. Paull:

Q. I wish you would tell just what happened when Mr. Perry, an Indian Agent, applied to Inspector Marlborough for fishing permits for all the Indians in his agency; were those granted?—A. No.

Q. Why?—A. Because it was not considered that it would be in the public interests to do so.

Q. Was it not a fact that the Inspector contended that only indigent Indians should receive those permits?—A. The area to which reference is made is the agency more or less in the vicinity of Vancouver, that lower section of the province where the rivers are small, and if the runs of fish are not afforded protection they can be readily killed out. It has been our policy for years, and I am quite satisfied it is a reasonable and fair policy, that the number of permits that should be granted there should be limited as much as is reasonably feasible to meet the requirements. There are no Indians there that are really in need of any permits.

Hon. Mr. STEVENS: I think that our friend, Mr. Paull, has chosen a rather unhappy site in Capilano. This privilege of fishing for food would really be more applicable to places a little more remote I think that preventing an Indian from spearing a dog salmon in the Capilano, or anywhere else, seems extreme, except, as Mr. Found pointed out, that it might lead to other abuses. The Indians at Capilano are not dependent upon fish for their food. It is so easy to demonstrate, being so close to the city, whether they need relief in that way. It is a rather unhappy location as a test for the soundness of the regulation. I would like to see more reference made, if possible, to interior points, or to the northern section away from the city altogether, and then we can better judge of what change there should be in the fishing regulations, if any.

Mr. DITCHBURN: The application Mr. Paull has reference to, put in by the Indian Agent, referred more particularly to the Indians who were living in the northern part of what is known as the Vancouver Agency, which runs up as far as the head of Bute inlet.

Hon. Mr. STEVENS: That is different.

Mr. DITCHBURN: They were the Indians known as the Homalho, the Sechelt and the Sahoose, more particularly, and the Squamish, which are immediately in the city of Vancouver.

By Hon. Mr. Stevens:

Q. What have you got to say to that, Mr. Found?—A. I think I fairly answered that. I would like to ask Mr. Ditchburn if he urges that all the Indians in that section should have permits?

Mr. DITCHBURN: I think I have already told your Chief Inspector, that for the purpose of keeping down any Indian complaint it would be desirable that your department should issue permits to each family.

The WITNESS: That is quite another thing.

Mr. DITCHBURN: To the head of every family, not to every Indian. It was never understood that every Indian should get it, but it is to the head of each family.

The WITNESS: What we were trying to arrange was that the Indian Agents should select the people who required permits, and the permits would be issued to these people. The agent knows these people better than our officer. The Indian agents put in the names of the heads of families to whom he thought permits should be issued, and to any others.

Hon. Mr. STEVENS: And they were refused?

Mr. DITCHBURN: They have not been issued yet.

The WITNESS: That has not come before me. Mr. Paull's question to me was that the agent put in a request for every Indian on these reserves.

Hon. Mr. STEVENS: I thought Mr. Paull said every Indian in the Capilano Reserve.

The WITNESS: In the Vancouver Agency.

Hon. Mr. STEVENS: Did you put in an application for every Indian?

Mr. PAULL: Every male Indian over the age of twenty-one. Even after the Indian agent had made application for the Indians of Bute, because they did not have a permit they were prosecuted, after application had been made by the Indian agent.

The WITNESS: I wish we had a map here, and then you could see our point. These streams flowing into these inlets are short streams, but it means in the aggregate a good many salmon. They are nearly all fall salmon. The Indians of British Columbia, to the extent of over 30 per cent, are dependent on fisheries for a livelihood. Now then, is it good business to allow a practically unrestricted amount of fishing in these small streams?

By Hon. Mr. Murphy:

Q. You mean fishing for a livelihood, not for food?—A. For such earnings as they make.

Q. That is, it is the fishing industry they are engaged in?—A. Quite so, very largely.

By Mr. McPherson:

Q. The Indian has to be kept alive to earn that money, and if he requires fish for food why should he not get a permit?—A. It is not difficult at all for the Indian to get food fish. It is not a long distance on any of these rivers to come down to the tidal water and get fish. These salmon play around the mouths of the streams and wait there until nature bids them go up to spawn. What the Indian wants to do is to wait until they go up to spawn and take them there when they are on the spawning bed.

By Mr. Paull:

Q. Will you name the species of salmon that the Indian takes for his food? —A. It depends entirely on the portion of the country in which he is. If he is in the portion of the country where he can get sockeye salmon, which are the most valuable, he will take them in preference to any other, and he is quite right in doing so. When conditions are different, he takes other salmon. In that area he has got to take what comes through, mostly chumps.

By Mr. McPherson:

Q. The quantity of fish that an Indian family of four would require must be limited?—A. Mr. Chairman, the amount of destruction of salmon that has taken place in British Columbia in earlier days by the Indian's methods of fishing is something deplorable. The putting up of barricades right across the streams and leaving them there was one of the things which we had a lot of work to do in stopping. When they catch their fish they just leave the barricades there.

By Mr. Kelly:

Q. I would like to ask if Mr. Found is aware of this fact; that according to the report of Mr. Babcock, who was the fisheries expert in British Columbia, less than one per cent of all the fish caught were caught by the Indians for food purposes?—A. Oh, yes, quite so.

By Hon. Mr. Stevens:

Q. The way it appeals to me is this, the Indians ought to have the inherent right to catch fish for food. Then comes the question of how we can harmonize

that inherent right with the safeguarding of the interests of fishing. Our effort has been to find out just where the rub comes in, where the difficulty and the dispute between the Fisheries Department and the Indians arises.

The WITNESS: I think they are being rubbed out year by year.

By Hon. Mr. McLennan:

Q. There are many of these streams which you say are short. How far are the spawning beds up?—A. Some of them a few miles, some of them not a mile. There are some of them up which the fish cannot get until the fall rains come and the waters rise. We are as anxious as any department of the Government service could be that there should be satisfaction on the part of the Indians.

By Hon. Mr. Stevens:

Q. Supposing we set aside certain districts, as we used to do for commercial purposes, where the Indians could have the exclusive right of fishing, then supervise the fishing out of season on these areas reasonably close, but at least give the Indian an opportunity to catch food fish in these areas?—A. There is no trouble about that at all. We will give the Indians all the privileges they want down on the commercial areas to get fish, and give them permits without any price whatever. What they want, as I understand it, is the exclusive privilege in large areas to catch fish for commercial purposes.

Q. I mean, why could we not do that for commercial purposes, and then in these areas permit them to take food fish up these little streams out of season. The difficulty undoubtedly is the supervision and controlling of a huge territory. Assuming that we gave them these areas in the fishing district for exclusive commercial fishing, give the Indians permits to take whatever fish they wanted in there for food purposes. It would be in their own interests to preserve the life of the fish in these areas because they are exclusive for commercial purposes, and if they depleted the fish there they would be cutting their own throats, as it were.

Hon. Mr. GREEN: In other words, you think they would keep off the spawning bed?

Hon. Mr. STEVENS: Not only that, but with the restricted areas you could give more rigorous supervision than you can with the large areas.

The CHAIRMAN: Are you dealing with tidal waters?

Hon. Mr. STEVENS: Yes, and streams going into tidal waters.

The CHAIRMAN: Then you are infringing on the public right.

Hon. Mr. STEVENS: No, I do not think so, Mr. Chairman, because for years, up until about ten years ago, we gave exclusive rights.

The WITNESS: 1922.

The CHAIRMAN: Yes, but you had no right to do it.

Hon. Mr. STEVENS: Was that ever challenged, the matter of constitutional rights?

The CHAIRMAN: I think you will find that that is the position.

The WITNESS: I am extremely doubtful if the Government has got power to give exclusive rights in tidal waters.

By Hon. Mr. Stevens:

Q. But we did it.—A. We did, but there is an inherent public right of fishing in tidal waters; that has been determined by the Privy Council.

The CHAIRMAN: Any British subject in Canada has the right to go and fish in these tidal waters.

Hon. Mr. STEVENS: For twenty years to my knowledge, and back of that, they gave these exclusive areas.

The CHAIRMAN: But they had no right to do so.

The WITNESS: And in the only instance where the matter came up before Parliament, Parliament advised against it.

Mr. MCPHERSON: If the agent permits the Indian to have exclusive rights over tidal waters he is maintaining the aboriginal title.

The WITNESS: That has already been determined by the Privy Council, that there is a public right of fishing in tidal waters, which is controllable by the Parliament of Canada only.

By Hon. Mr. Stevens:

Q. When you say "controllable," does that not give you the right of determining who shall or shall not fish in there?—A. Yes, who shall or shall not, but it does not give the right to take away from a citizen of this country a right which he has in common with another citizen.

Q. You will not permit me to go and fish anywhere unless I come to you and get a certain permit or license?—A. No.

Q. Why could we not set aside certain districts and say, "In these districts we will give a license only to Indians," and dedicate it to them, as it were?—A. I do not think that you could deny me, if I went there and applied for a license, the granting of the license.

By Mr. McPherson:

Q. Let me put it in this way, Mr. Found, although it may seem ridiculous. If you issue a license to fish in British Columbia tidal waters, would that restrict a man from fishing in the Nova Scotian waters?—A. Oh, yes.

Q. Then, are you not locating him within a certain area under the law?—A. Yes, but let me follow your question, sir. If I want a license for Nova Scotian waters also, I must get it, if I apply for it.

Q. I mean this, Mr. Found; your law is under the control of the Dominion Parliament, and is administered by your Department, and if you issue a license to fish in British Columbia tidal waters, that license you say is confined to fishing in British Columbia. But if you cannot restrict him from any coastal waters there, is it not just as good in Nova Scotia waters, which are also under the Dominion authority? I admit that that would be ridiculous, so far as location is concerned, but the fact remains the same, does it not?—A. We can say to everybody, that they may fish under certain conditions. Now then, everybody has got the same right to fish under those conditions, and that is not limited to any particular person.

By Hon. Mr. Stevens:

Q. If you issue me a license in district No. 1, can I fish in district No. 2?—A. At present, you may, yes.

Q. You say I may?—A. Yes, at the present time the regulation provides that the licenses are transferable from one district to another.

Q. No, that is not the point.

Hon. Mr. MURPHY: If he just holds it for No. 1.

By Hon. Mr. Stevens:

Q. Yes, can you restrict me then to No. 1?—A. Yes, but I cannot restrict you from taking out a license for No. 2.

Q. That is another thing?—A. Then, I do not see the point.

By Hon. Mr. McLennan.

Q. In other words, Mr. Found, supposing you issue a license under the inherent rights and restrict it to certain times and to certain areas?—A. But we are not restricting the rights of anybody to fish in compliance with these requirements.

Q. No, leave the compliance out. I am not quarrelling with that?—A. Here is the Privy Council decision, and I think it is clear enough.

Q. You say there is an inherent right to any national, any British subject, to fish in British tidal waters?—A. Yes, since Magna Charta that has been the case.

Q. Yes, but that is regulated and controlled and limited by the fact that to fish in those waters, the fisherman must get a license, and that license as I understand it, is restricted to certain areas or to certain districts.

Hon. Mr. STEVENS: District No. 1, for instance.

By Mr. McPherson:

Q. Is your trouble this, Mr. Found, you have the right to issue licenses, but you have no right to refuse a license to anyone?—A. That is my point. I must issue them to every British subject who applies.

Q. And, if I ask you for a license for Nos. 1 and 2, you have no power to refuse me?—A. Yes, not to fish in accordance with the regulations.

Q. And is there any reason why the regulations should not be changed so that the fisherman's rights could be granted to the Indians on these points?—A. I do not think that there is any power. There is the power of Parliament, but short of that power of Parliament, I do not think there is any power that we have now that will enable us to give the exclusive rights in any area to any individual.

Q. At the present time, you think it would need legislation?—A. Yes, I do not think there is any doubt about that.

Q. The departmental right would not be strong enough?—A. Yes, I do not think there is any doubt about that either.

By Hon. Mr. Stevens:

Q. Here is the law, is it not?—A. Yes, those are the regulations under the Act.

Q. This says: "No license shall be transferred except by special written permission of the chief inspector or fishery officer."—A. Quite so.

Q. That means that you locate a license?—A. In a broad way, yes.

Q. Then why can we not locate a license for the Indians?—A. So you can, Mr. Stevens, but you cannot refuse any one else who wants to go in there. You cannot give the Indian an exclusive franchise.

Q. You say here that no one shall transfer a license. You can give the others licenses except in that area?—A. But there is nothing there to prevent a man getting a transfer.

Q. He cannot get a transfer without written permission, and you can refuse him permission.

Mr. MCPHERSON: I think Mr. Stevens; the difficulty is, that they have power to control the license but not to limit the number.

Hon. Mr. STEVENS: The power has always been exercised.

The WITNESS: Not always. By the Privy Council decision in 1920, the situation has been made pretty clear.

By Hon. Mr. Murphy:

Q. From the feeling of the Committee as revealed in the questions, you have been asked, Mr. Found, can you make any suggestions as to how the appli-

cation of the present regulations could be altered in any way, so as to make them more acceptable to the Indians?—A. I have a very strong feeling that if we can get the Indians to come down to the tidal waters and fish there for their food purposes, their difficulties, and the difficulties of fisheries' protection will be very largely eliminated. That is not practicable in long streams like the Fraser and the Skeena where the people are very remote.

Q. The distances they would have to go are too great?—A. Yes, too great; but in all these shorter streams, it is iniquitous, the fishing in the spawning grounds. If we can get away from it, it ought to be restricted as much as it can be in the permanent interests of every one, in the permanent interests of the Indians themselves.

Hon. Mr. STEVENS: It is very desirable that the spawning grounds should be protected.

Hon. Mr. MCLENNAN: In the small rivers, that is practicable.

By Hon. Mr. Murphy:

Q. Have you any suggestion in that regard?—A. My suggestion has been, and I think it has been more or less considered, the one I have just indicated; that we will given the Indians any reasonable privilege they desire to come down and catch salmon in the tidal waters. We will be glad to lend equipment.

By the Chairman:

Q. How far would they have to travel to do that?—A. In these rivers they are speaking of, as these gentlemen know, it is comparatively a few miles.

By Hon. Mr. McLennan:

Q. Ten or five miles?—A. I am not familiar with the location where the Indians mainly live.

By Hon. Mr. Stevens:

Q. There are a lot of rivers flowing into these inlets, where the spawning grounds would extend ten, fifteen or twenty miles up-stream, or in some cases, much further.

Hon. Mr. MCLENNAN: And where do the Indians live?

Hon. Mr. STEVENS: There are some living up there. Then take rivers like the Naas and the Skeena, rivers of that character are very long.

Mr. MCPHERSON: That can be cleared up in this way, that those are reserves that they are asking as special privileges on the ocean, of fishing in tidal waters. They do that because they are near enough to use those waters, and if they can use them, then they can abandon the fishing in the streams a little further up. They must be near enough in order to give them the fishing grounds and privileges on the shore, and that would eliminate the necessity of giving them privileges on the rivers, the spawning grounds.

WITNESS: I don't think you would find that to be the case. I think Mr. Kelly will tell you that there are a number of Indians who do not come down, and these people are the difficulty.

Mr. KELLY: There is another side to it which perhaps ought to be explained.

The CHAIRMAN: Let Mr. Found finish his statement, and then you may explain.

Mr. KELLY: Yes, but I thought I might suggest certain things, if you will allow me, that he would answer.

The CHAIRMAN: Very well.

Mr. KELLY: Mr. Found no doubt is aware of this fact, that to bring the Indians down to the tidal waters to fish for food would be a new departure in this way, that the Indian would be under the necessity of getting a net, which is a very expensive affair; it runs into hundreds of dollars to get a net.

By Hon. Mr. Murphy:

Q. Could the department supply that?—A. The Department of Indian Affairs in several instances is supplying nets, such as would enable them to catch enough fish for their own food purposes, down on the coast.

Mr. KELLY: What part of the coast?

WITNESS: All around, anywhere where we allow commercial fishing. We would be most happy, and have suggested it many times.

Mr. KELLY: A net 150 fathoms long, at the present time, is quite an expensive net. Would you supply the material?

Mr. FOUND: Yes, but there is no need for such a net. An Indian has no need to use more than a few fathoms.

Mr. KELLY: I would like to draw Mr. Found's attention to this fact. Immediately you go out there, you are brought into competition with commercial men who are using not only drag seines, but large purse seines, and a gill net is simply out of the question, under such conditions. That is the difficulty, and Mr. Found is no doubt aware of this fact too, that the fish caught for food by the Indians at the present day, do not begin to compare with what he used to catch in days gone by.

WITNESS: True.

Mr. KELLY: It is only the older, and the more indigent, Indians who are doing that. Those who are working have not the time to go to the trouble of catching fish, and curing them as they used to do. A very small fraction of Indians who used to do that are now doing that sort of thing. The others are engaged in something else. Therefore, we contend that even if they were permitted to catch fish for food, without licenses, that privilege would not be abused, and it would be provided that anyone who abuses the privilege would be dispossessed of it at once for that season. I think it would be fair to do that.

Hon. Mr. MURPHY: How would you dispossess them when they are without a license?

Mr. KELLY: We have Dominion constables in the employment of the Indian Department, who are pretty much on the scene most of the time.

Hon. Mr. MURPHY: But, the Indian would not have any license you have said; then how would you dispossess them of the right to fish. If they had a license I understand you could cancel it.

Mr. KELLY: If he was caught selling fish for commercial purposes, when he was supposed to be catching them for food purposes, he could be brought into court like any one else.

Hon. Mr. MURPHY: Then that is what you have reference to?

Mr. KELLY: Yes.

By Hon. Mr. Stevens:

Q. Coming back to what I said a moment ago, here is the Act. I presume this is the consolidated Act?—A. The Act is attached to the regulations there.

Q. It provides that the minister may, wherever the exclusive right of fishing does not already exist by law, issue, or order to be issued, fishery leases or licenses for fishing, wheresoever situated or carried on, but leases or licenses for any term exceeding nine years shall be issued only under the authority of the Governor in Council. That would indicate that you have the right to issue leases

or licenses for exclusive areas. Then it provides that the Governor in Council will make regulations, among other things, prescribing the time and the manner in which fish may be fished for and caught. Now, under those two powers given in the Act—the other is the regulation that we have over here—it looks to me as if we had a perfect right to set aside areas for the Indians, and I believe, myself, that the solution of this main difficulty is to set aside main areas for these Indians.

Mr. McPHERSON: Mr. Chairman, may I make this suggestion? I think perhaps the Committee feels that the right of the Indians to fish for food is paramount, and it is very desirable that it should be secured. If that is the opinion of the Committee, should we not at some stage settle the matter by recommending that the Department of Fisheries and the Department of the Interior get together and make such necessary changes in the regulations regarding the location of the reserves, to allow them to take fish for food. It is a matter of detail, apparently depending on the individual location of each reserve. A regulation at one point in British Columbia might be absolutely faulty in another.

WITNESS: Yes, conditions are very different in different places.

Mr. McPHERSON: We might discuss these details here for the rest of the session without making any progress.

Hon. Mr. STEVENS: I do not think there is any question about the right or the power of the minister to make the regulations. I agree with Mr. McPherson that we should let this go now.

WITNESS: The regulations already exist, Mr. Chairman. They are right here.

The CHAIRMAN: You mean, that if the members think there should be something done—

WITNESS: It is a matter of working it out.

By Mr. McPherson:

Q. It is a matter of taking the different reserves, and then reporting to the department as to the conditions of those reserves, is it not?—A. Yes.

The CHAIRMAN: Are there any other questions the members of the Committee want to ask Mr. Found?

Hon. Mr. STEVENS: I think Mr. Found has been very frank, and very informative to us. I have nothing more to ask him.

WITNESS: I think the Indians will bear me out that it is our desire not to be arbitrary. We may have different views, but that is our desire.

Mr. McPHERSON: I think it would save the face of the Department of the Interior and it would save the Indians if a conference were held, as I have suggested.

WITNESS: We may have differences of opinion, but we have no difference in desire.

The CHAIRMAN: Is there any one else the Committee wants to examine?

Hon. Mr. STEVENS: I think not. Not for me, Mr. Chairman.

Hon. Mr. McLENNAN: I think we had better carry on in private, if I may make that suggestion.

Hon. Mr. STEVENS: Yes.

The CHAIRMAN: Yes. As Mr. O'Meara is not here, can you tell me, Mr. Kelly, if he wishes to make a further statement to the Committee?

Mr. KELLY: Yes, Mr. Chairman, he wishes just what I asked for yesterday.

The CHAIRMAN: That can be done by a written statement.

Mr. KELLY: If that is the ruling of the Committee, we will have to bow to

it. If you will not allow him to present an argument except by a written statement, I am inclined to think it is unusual.

The CHAIRMAN: You were not here the other day, Mr. Kelly, but Mr. O'Meara started to make statements, and he was rambling about all over the case, to such an extent that we had to stop him because we wanted to get on with the work of the Committee.

Mr. KELLY: I would like to remind you of the fact, Mr. Chairman, that this is very important to us. I have known Mr. O'Meara for long years have had close and intimate connections with him, and I will guarantee that if he were accorded that privilege that, a certain time to be set, while it is a very heavy matter, if he proceeded with the argument without many interruptions, I think he would get through in two or three hours.

Hon. Mr. MURPHY: We had a fairly long session with Mr. O'Meara.

Mr. MCPHERSON: We will be adjourning shortly now, Mr. Chairman, and the Committee might meet this afternoon in camera and discuss the matter and at the same time discuss the question of whether we will hear Mr. O'Meara or not.

Mr. KELLY: May I suggest this as an alternative? While the hon. gentlemen are well aware that I have no ability at all to presume to treat on the constitutional side of this very important question, yet if it is thought fit, I might read the material part, the papers on which we are depending for our argument, and place them on record, if there is no desire to hear Mr. O'Meara.

Hon. Mr. STEVENS: Just a suggestion, Mr. Chairman. One of our troubles, Mr. Kelly, with Mr. O'Meara is that he will cite some document; he does not present it; he quotes an obscure extract from it, and offers that to the Committee as the opinion of some man in authority. For instance, he quoted something that a Senator had said, and something that Sir Wilfrid Laurier had said, and so on. That is not evidence, and we cannot go through the library looking for the documents referred to. My suggestion is——and I think it will shorten this very materially—if Mr. Kelly and Mr. Paull and Mr. O'Meara will sit down and assemble the documents they wish to cite, and lay them on the table before this Committee that would be of assistance. Personally, I would rather have Mr. O'Meara file a written argument, supporting the documents, than hear him, because I think he is hopeless. However, I am prepared to hear him in a limited time on those documents, but let him file the documents, so that we may have them before us, and judge ourselves as to the merits of the little extracts that he takes from them. That is my position, and I certainly must object to having Mr. O'Meara or anyone else merely cite a paragraph here or there out of a document, without filing the document.

Mr. KELLY: That is agreeable to us, and I think we will do that. We do not want to injure our case by insisting upon any method that is not acceptable to the Committee. We are anxious to expedite matters as much as possible, and under as agreeable conditions as possible.

The CHAIRMAN: Mr. Kelly, you referred yesterday to a decision or a letter of the Minister of Justice?

Mr. KELLY: Yes.

The CHAIRMAN: Well, of course all that evidence of yours was practically struck out of the record, because you had not put in the document. If you want to bring that in, you will have to produce that document.

Mr. KELLY: You will realize, Mr. Chairman, that it was then about six o'clock, and we could not procure the document at that hour. We met again at ten o'clock this morning, and it was impossible to get the document at that time. But let me say that Mr. O'Meara is engaged now in doing that very thing; he is procuring that document, and we will file it.

Mr. McPHERSON: I do not want to frighten the Committee, but I have been looking at that file of books Mr. O'Meara has there, and I suggest that it contains a large number.

Mr. KELLY: Yes, but, gentlemen, I do not think there is nothing here to be afraid of.

Hon. Mr. STEVENS: We will not be frightened by the books, if you produce the documents.

Hon. Mr. MURPHY: Mr. Kelly has undertaken to do that. He says that he is agreeable that that should be done, that the documents shall be produced and filed, and the argument limited to the documents so produced.

Mr. KELLY: Yes.

Hon. Mr. MURPHY: When can you be ready? This afternoon or to-morrow morning?

Mr. KELLY: To-morrow morning would be preferable, I think.

Hon. Mr. MURPHY: Will that be agreeable, Mr. Chairman?

The CHAIRMAN: If that will suit the members of the Committee.

Mr. KELLY: In view of what has been said, we will get busy and we will undertake to be prepared.

Mr. HAY: Mr. Chairman, we had several witnesses yesterday, who would not come under the order for payment of witnesses. They are Mrs. Williams, Chief Basil David and William Pierrish. With your permission, Mr. Chairman, I move that we recommend the payment of these witnesses.

Hon. Mr. MURPHY: Certainly. I will second that. Put through the usual motion.

Witness retired.

The Committee adjourned until Wednesday, April 6, at 10 o'clock a.m.

COMMITTEE ROOM 368,

WEDNESDAY, April 6, 1927

The Special Joint Committee appointed to inquire into the claims of the Allied Indian Tribes of British Columbia, as set forth in their petition submitted to Parliament in June, 1926, met at 11 o'clock, a.m., Hon. Hewitt Bostock presiding.

The CHAIRMAN: Now, I understand that Mr. O'Meara wants to make a statement. Is it the pleasure of the committee that Mr. O'Meara be heard?

Hon. Mr. McLENNAN: Does the understanding of yesterday still hold good?

Hon. Mr. STEVENS: The understanding at the close of yesterday's proceedings was, I think, that Mr. O'Meara would make his presentation, and we adjourned until this morning so that he could have his documents supporting his statement well in order, which we now presume he has, and thereby cut down his statement to reasonable bounds. I think the committee are quite willing to hear Mr. O'Meara in that manner, as long as the documents from which he is going to quote are presented as—

The CHAIRMAN: A matter of record.

Hon. Mr. STEVENS: Are "proven"—I believe that is the legal term.

The CHAIRMAN: Mr. O'Meara, are you ready to proceed?

Mr. O'MEARA: Yes, sir.

The CHAIRMAN: Before you commence, Mr. O'Meara, you have heard what Mr. Stevens said. We want you to make your statement as short as you possibly can, and where you have to refer to the decisions of the Court, or anything of that kind, we want you to give the reference, so as to save the time of the committee as much as possible.

Mr. O'MEARA: I assure you, hon. gentlemen, that is my desire exactly, and it will be carried out to the fullest possible extent.

I first will put in some necessary documents proving the petition. The first is the letter addressed by myself to His Royal Highness the Duke of Connaught on the 29th May, 1916. The second is the original letter of His Royal Highness the Duke of Connaught addressed to myself on the 25th September, 1916. The next is a statement issued by the British Columbia Indian Conference which was held at Vancouver in the month of June, 1916, and proves the unwillingness of the tribes of British Columbia to accept the terms of the government of Canada. The next is the text of the Order in Council passed by the government of the province of British Columbia in the month of August, 1923. The next is the full stenographic report of the interview had by the Minister of the Interior with the executive committee of the Allied Tribes and myself at Vancouver, in the month of July, 1923, and in that I refer especially to these parts to be found, first, on page 38, commencing at line three, and including all to the words "a reference of that character"; the second extract commences on page 39, at line fourteen, and includes all to the end of the page, and the third extract is found at page 43, beginning at line eleven, and includes the words down to "there can be no question about the moral sense."

The CHAIRMAN: That is the official report of that conference?

Mr. O'MEARA: The official stenographic report of that interview, hon. Chairman. The next is the text of memorandum issued and published by the Department of Indian Affairs on the 9th day of August, in the year 1924. I have it here in the shape of a clipping; no doubt there is easily available an official record of that.

The CHAIRMAN: We had better hear from Dr. Scott on that.

Dr. SCOTT: I object to that.

Hon. Mr. MURPHY: That can be verified by comparison with the official records.

Hon. Mr. MCLENNAN: Does it give the date?

Mr. O'MEARA: Ninth August, 1924.

The CHAIRMAN: But you cannot put in a newspaper clipping like that; you must put in either the original or a certified copy, and if you want that, you must ask the Department to produce the document.

Mr. O'MEARA: I concede the point, Mr. Chairman; I shall be pleased to do that. The text is there.

Hon. Mr. STEVENS: That is, frankly, Mr. O'Meara, an article in the Ottawa Citizen?

Hon. Mr. MURPHY: Purporting to be from the Department.

Dr. SCOTT: I object to that.

Hon. Mr. STEVENS: It is pretty far-fetched; I do not think Mr. O'Meara should press that.

Mr. O'MEARA: It is an official memorandum.

Hon. Mr. STEVENS: No, it is a newspaper clipping.

Dr. SCOTT: I do not think anything in the Ottawa Citizen is an official memorandum.

Hon. Mr. MCLENNAN: Does it refer to the report?

Mr. O'MEARA: It gives the text of an official memorandum issued by the Indian Department. I admit at once I should give proof of that.

The CHAIRMAN: We cannot accept that. You can ask Doctor Scott to produce that.

Mr. O'MEARA: I will. The next is the full text of a letter addressed by myself to the Minister of Justice on the 17th of August, 1925.

The only remaining item, hon. gentlemen, is the text of the resolution of the Executive Council of the Allied Tribes, passed in the month of January, 1925. This is mentioned in the petition. If any evidence is asked as to that, Mr. Paull will be in a position to furnish it.

The CHAIRMAN: Would the Committee say if they wish all these documents that Mr. O'Meara has handed in to be printed in full in the records of the proceedings.

Hon. Mr. MCLENNAN: We had better leave that to your discretion, Mr. Chairman.

Mr. HAY: Would it not do to just say that he made reference to these things, and then they could be supplemented later on and have a separate production, if necessary?

Hon. Mr. MURPHY: The printing would take a long time.

Mr. MCPHERSON: We are asking Mr. O'Meara to cut down his address by filing documents and it would only be fair, where other documents have been filed up to date, that the documents should be printed.

Hon. Mr. MCLENNAN: It is a question of whether we want to take the time and expenses of voluminous printing.

The CHAIRMAN: It is for the Committee to decide if they want them printed.

Hon. Mr. STEVENS: I think before they are printed they ought to be examined to see the necessity of printing.

Hon. Mr. MURPHY: We could have a round table conference and talk about it.

Mr. O'MEARA: Hon. gentlemen, I consider it a great honour to address you, and I will condense absolutely everything that can be condensed.

The first remark I wish to make is with regard to the telegram that came from the Government of British Columbia, in which the province relies upon section 109 of the British North America Act. I point out that that is the outstanding ground upon which the Allied Indian Tribes are relying to-day. They rely very strongly upon Section 109 of the British North America Act.

The next matter is the statement put before the Committee by the Minister of the Interior, regarding the subject of conquest. Reference was made to some stated facts which seemed to show that the Indian Tribes of British Columbia are in the position of a conquered people.

The first reply to that question is that, as a matter of fact, the Tribes of British Columbia have not been conquered.

The second reply will be found in a very recent judgment of the Judicial Committee of His Majesty's Privy Council. That is a case known as the Southern Nigeria case, in which that matter is distinctly dealt with. I refer especially to page 410, at which it will appear that conquests alone will not destroy the native land rights. In that case the colony of Lagos had been conquered. There had been a cession of the territory to the British Crown and their lordships held that neither the conquest nor the cession made to the British Crown destroyed the native land rights. I rely upon that as distinctly distinguishing the point as to conquest.

The CHAIRMAN: Mr. O'Meara, would you give the name of the case and the reference?

Mr. O'MEARA: It is the case of Amodu Tijani vs. The Secretary of Southern Nigeria, reported in Law Reports, Appeal Cases 1921, Volume 2, at page 399.

I wish to speak further on that case in a few minutes, but at the present time I am only speaking on the point of conquest.

The additional reply that I wish to make is to be found in a few words quoted from the official report of an interview had by the Minister of the Interior, and others representing the Government of Canada, with the members of the Executive Council of the Allied Indian Tribes, in the month of July, 1922. The Minister addressing the Indians said, "I do not want to go into details, but to say that you are the aboriginal owners of this province as no treaty was ever made with the Indians of British Columbia."

I wish to briefly reply to some outstanding points contained in the memorandum of Dr. Scott, a memorandum upon which I must sincerely congratulate Dr. Scott, as I think it is constructed with very great skill and states in an admirable manner the point of view of the Department of Indian Affairs. But, hon. gentlemen, it will be my duty to place before you the fact that there cannot be shown to be any sound constitutional difference between the position of the Department of Indian Affairs, as thus so ably set forth, and the position taken by the province of British Columbia.

First of all I refer to a few words to be found on Page 3, "No Cession of the aboriginal title claimed by the Indians over the lands of the Province of British Columbia has ever been sought or obtained." I desire to take very strong ground on this, that there is an admission of the first order as to the actual facts upon which the allied tribes stand to-day.

The next is to be found in these words at the bottom of that page, where Dr. Scott says: "The Proclamation of 1763, which is referred to by the advisers

of the British Columbia Indians as a basis of their aboriginal title to the lands of the Province, was issued after the conquest of Canada, to establish His Majesty's Government in the newly conquered territory. By subsequent Acts of the Imperial Parliament, the Proclamation was repealed, the courts were set up, and a system of government was gradually developed."

Now, honourable gentlemen, I am inclined to think that there we find the ground upon which the Minister of the Interior based his remark about the conquered position of the tribes. I wish to point out some facts with regard to that. The first fact is that there was no conquest of the native Indian tribes of this country at all. The conquest there referred to was the conquest of the British over the French. And the second fact was that when there was a treaty of peace and Cession from France to Great Britain, all the rights of the aboriginal tribes of Canada were explicitly preserved by the very language of that document.

Then I refer very specially to a few words to be found in the opinion of the Minister of Justice given in the year 1875. Pardon me a moment, Mr. Chairman, where is that?

Hon. Mr. BARNARD: In Appendix B.

Mr. O'MEARA: May I ask Dr. Scott which Appendix contains the opinion of the Minister of Justice?

Dr. SCOTT: In 1875, it is in Appendix B, I think.

Mr. MORIN: At Page 39.

Mr. O'MEARA: These words are of importance. I shall read from the language of this report: "It is not necessary now to enquire whether the lands to the west of the Rocky Mountains and bordering on the Pacific Ocean, form part of the lands claimed by France, and which, if such claims were correct, would have passed by Cession to England, under the Treaty of 1763, or whether the title of England rests on any other ground, nor is it necessary to consider whether that Proclamation covered the land now known as British Columbia.

It is sufficient, for the present purposes, to ascertain the policy of England in respect to the acquisition of the Indian Territorial Rights, and how entirely that policy has been followed to the present time, except in the instance of British Columbia.

It is true, also, that the Proclamation 1763, to which allusion has been made, was repealed by the Imperial Statute 14 George III, Chapter 83, known as The Quebec Act; but that Statute merely, so far as regards the present case, annuls the Proclamation, "so far as the same relates to the Province of Quebec, and the commission and the authority thereof, under the authority whereof, the Government of the said Province is at present administered, and the Act was passed for the purpose of effecting a change in the mode of the Civil Government of the administration of justice in the Province of Quebec."

So that two outstanding points are shown there, honourable gentlemen. One is that the Minister of Justice did not think it necessary to rely upon the Proclamation of 1763, and the second point is that he says it was only repealed to that extent.

The next is to be found on Page 5, and I read these few words: "By the Dominion Parliament and the Government of British Columbia this was considered" that is, Article 13—"a satisfactory division of responsibility for the Indians and the Imperial Government acquiesced. The terms of the union were approved by Order of Her Majesty in Council on the 16th May, 1871."

May I point out that that proposition simply assumes that all responsibilities were dealt with. And it is submitted that that is not an exact proposition; only certain responsibilities were dealt with in Article 13, whether on the side of the Government of Canada or on the side of the Government of British Columbia.

I next ask attention to these words: "The Indians have, in fact, been held to be the special wards of the Crown." Those words are quoted from Mr. Trutch's memorandum. Now I do not wish to enter upon any full discussion about that, but I wish just to place my clients, these tribes, upon record that they do not admit that the relation of the Government of Canada towards the tribes of British Columbia is that of a guardian. This submission is and will be that that relation is one of trustee-ship. I do not think it necessary to go further into that matter.

Hon. Mr. MURPHY: The relationship with the Government of Canada?

Mr. O'MEARA: Yes, that it is not that of guardian but of trustee-ship. That is the distinction which I draw, which I humbly submit is a very important and fundamental distinction; because a ward has no power to do anything for himself; no power to make an agreement; no power to do anything; but his guardian must do everything for him. The relationship of trustee-ship is radically different; and I submit respectfully that the relationship of the Government of Canada to the Indians of British Columbia is that of trustee-ship.

I next refer to a few words to be found on Page 7. Dr. Scott is narrating the opinion of the Minister of Justice and the disallowance of the Land Act of British Columbia, and he uses these words: "The main reason" for the disallowance "being the fact that no cession of the Indian title had been obtained and the Act was disallowed by Order in Council of 16th March, 1875." There again, Mr. Chairman and honourable gentlemen, in the briefest possible way, I rely and very strongly rely upon the proposition that the absence of a cession of title in British Columbia was the ground upon which that Act of the Province was disallowed.

May I add a few words to that, in answer to a question which arose, which was to what happened afterwards. What happened in the next year was that Mr. Edward Blake had become Minister of Justice, and he made another report. In the meantime, the Provincial Legislature had again enacted the Land Act, and it came before Mr. Blake. His opinion was given and it is all set out in the paper and is available in this appendix. His opinion absolutely agreed, as I submit, with that of his predecessor, who had become Judge Fournier, of the Supreme Court of Canada; but he said that he was not prepared to go the length of advising that again the Act should be disallowed.

The next will be found in a few words on Page 8. These are the words used with reference to the opinion of the Minister of Justice given in the month of January, 1875: "It would hardly be possible to draft a stronger document in support of the claim for an aboriginal title than this memorandum."

Again, Mr. Chairman and honourable gentlemen, I simply submit to you that that weighty sentence is enough in itself to prove the title of the Indian tribes of British Columbia.

Mr. MCPHERSON: Mr. O'Meara, do you seriously contend that the opinion of the Superintendent of the Indian Department is evidence of title? That is only his opinion.

Mr. O'MEARA: I am sorry if I conveyed that meaning. I mean that what he is referring to there, the opinion of the Minister of Justice, which, honourable gentlemen, was adopted by Order in Council and the Governor General at that time. That is what I mean is conclusive.

Mr. MCPHERSON: What you read was Mr. Scott's opinion on that.

Mr. O'MEARA: I apologize. What I meant to convey is that in that sentence Dr. Scott puts before this Committee the proposition that it would not be possible to find a stronger document in support of the claim for an aboriginal title than the document by the Minister of Justice on which I rely.

Hon. Mr. MURPHY: And after that, Mr. Scott may go on to point out an opinion different from that.

Hon. Mr. MCLENNAN: And he does in the next line.

Hon. Mr. STEVENS: I think you will note that Dr. Scott says on the one hand so and so and on the other hand so and so. I do not think it is right to infer that that opinion given there is supporting your argument.

Mr. O'MEARA: The opinion upon which I rely is the opinion of the Minister of Justice itself.

Hon. Mr. STEVENS: Oh, well, go on.

Mr. O'MEARA: There is just one other point to which I wish to refer in the memorandum by Dr. Scott, and that is to be found on page 57. I refer specially to what appears on Page 57, the memorandum that was issued by Dr. Scott on the 11th March, 1914. I ask attention to the exact view expressed in that memorandum. Honourable gentlemen will find that Dr. Scott says here that his purpose in putting that memorandum before the Government was to show the real nature of the Indian title. I submit for your consideration that when you examine that memorandum you will find that the real nature of the Indian title as there set out is simply this. He says: "It follows that the Indian title, when acknowledged by the Crown, cannot be separated from what the Crown elects to grant."

That is the heart of the whole memorandum; and what I submit, honourable gentlemen, is that whether the view is right or whether it is wrong, the position taken is that the tribes of British Columbia have no actual title, and I specially refer to that because I will be able to put before you, honourable gentlemen, that the recent case, the Southern Nigerian Case, takes an absoluteley different view of the native title.

I wish next to place before you, honourable gentlemen, the memorandum that was presented by the late Doctor McKenna to Premier McBride on the 27th July, 1912. I have it in my hand, but no doubt the official copy is available. This is a copy furnished by the Department of Indian Affairs, and I ask attention to two facts; one is that this memorandum contains a very strong argument for the proposition that the Province of British Columbia has no reversionary title in the reserves; and the other prominent feature of this is, as will be found towards the close of the memorandum, it shows that Dr. McKenna fully realized the actual title of the Indian tribes as being an interest in all the lands of British Columbia. I ask special consideration of that memorandum.

I go on from that, Mr. Chairman and honourable gentlemen, to put before you some very positive grounds supporting the aboriginal title claimed by the tribes of British Columbia. It is contained in the memorandum which was placed in the hands of the Government of Canada on the 29th February, 1924, by three delegates of the allied tribes together with myself as general counsel; and the parts specially relied upon will be found on the first four pages. With regard to reading this or any part of it, I am completely in the hands of the Committee. I put the document in because it contains that matter.

The next definite proof, as I submit, of the Indian title claimed by the tribes is to be found in the decisions of their lordships of the Judicial Committee of the Privy Council extending over a number of years. There are quite a number of those decisions and I am fortunate in being able to present the result of it all as stated by Mr. Newcombe in his book, which was published in the year 1908, instead of attempting to present them in detail.

Hon. Mr. MURPHY: What is the title of the book?

Mr. O'MEARA: The title is "The British North America Acts"; and it was published in the year 1908.

Hon. Mr. MURPHY: At what page Mr. O'Meara?

Mr. O'MEARA: At page 89 I read one paragraph.

Hon. Mr. STEVENS: Will you give us the subject of the chapter which you are quoting from, so that we will know what he is talking about?

Mr. O'MEARA: The heading is "Indians and Lands Reserved for the Indians." I will read what Mr. Newcombe says:—

It therefore appears that lands reserved for Indians and subject to a title such as existed in the St. Catherines Milling case are vested in the Crown in the right of the province subject to the Indian title or interest, which though a mere burden is an interest other than that of the province in the same within the meaning of Section 109 and therefore apparently an interest independent of and capable of being vindicated in competition with the beneficial interest of the province. The title is in the Crown, burdened with the Indian interest and subject to this beneficial interest is in the province within which the lands lie."

Mr. MORIN: Is he referring to the Reserved Lands?

Mr. O'MEARA: No, the whole of the territory.

Hon. Mr. STEVENS: No, the language which you have read refers entirely to Reserves.

Mr. O'MEARA: I was just going on to explain that point. He uses the expression "It therefore appears that lands reserved for Indians, subject to a title such as existed in the St. Catherines Milling Case"—he uses the word "reserved" but the explanation is simple, honourable gentlemen; the Proclamation of 1673 uses the word "reserved."

Hon. Mr. STEVENS: He is dealing there with lands reserved and with nothing else.

Hon. Mr. MURPHY: The facts will speak for themselves.

Hon. Mr. MCPHERSON: Personally, I want to go on record that the opinions quoted, whether expressed by Departmental officials, Ministers of Justice of the past or by anybody else, much as I may respect them, are not evidence of the facts in the case but merely of their opinions. This is an opinion of Dr. Newcombe?

Mr. O'MEARA: Yes, but it sums up a number of judgments of their lordships.

Hon. Mr. MCPHERSON: It sums up his opinion of their judgments. The only reason I mention it now is because no doubt there will be a lot of these and I do not want to be bound by them as evidence of fact.

Mr. O'MEARA: Honourable gentlemen, I am prepared to prove absolutely, by bringing the evidence here, to point out what proves it.

Hon. Mr. STEVENS: The point I object to is this, that you quote that and you say that it applies to all the lands of British Columbia. The text itself clearly shows that it applies to lands reserved. There is no use in kidding ourselves about this; we have to face the facts. You cannot hypnotize yourself or your clients.

Mr. O'MEARA: May I read that sentence again, where he says that the title is in the Crown burdened with the Indian interest, and subject to this the beneficial interest is in the Province within which the lands lie.

Hon. Mr. STEVENS: Certainly.

Mr. O'MEARA: I submit it would be impossible to apply that language to an Indian Reserve in the sense to which Mr. Stevens refers.

Hon. Mr. MCPHERSON: Did not he apply that to a case which was of that kind?

Mr. O'MEARA: The St. Catherines Milling Case has reference to the territory of a tribe and not to a reserve. We have the text of it here. Undoubtedly that case deals with the general question of Indian title. I have the St. Catherines Milling Case, to which Mr. Newcombe specially referred, which is to be found in 14 Appeal Cases 46; and beyond any doubt it shows that.

Hon. Mr. MCLENNAN: Read the text of the report.

Mr. O'MEARA: I will read the headlines.

The CHAIRMAN: I did not catch the name of the case.

Mr. O'MEARA: The St. Catherines Milling and Lumber Company vs. The Queen, which is to be found in 14 A. C. 46. I was just wondering what I could find that is brief enough to read here.

Hon. Mr. MURPHY: That is what we are wondering too.

Mr. O'MEARA: I will read the Head Note. Mr. Chairman and gentlemen, this is a long judgment, and I will read the Head Note: "Section 109 of the British North America Act, 1867, gives to each Province the entire beneficial interest of the Crown in all lands within the boundaries which at the time of the Union were vested in the Crown, subject to such rights as the Dominion can maintain under sections 108 and 107. By Royal Proclamation of 1763, possession was granted to certain Indian tribes of such lands parts of our dominions and territories as not having been ceded to or purchased by the Crown were reserved for the present to them as their hunting ground. The Proclamation further indicated that all purchases from Indians of lands reserved to them must be made on behalf of the Crown by the Governor of the Colony in which the lands lie and not by any private person."

In 1873 the lands in suit situated in Ontario, which had been an Indian occupation until that date, under the said Proclamation, were to the extent of the whole right and title of the Indian tribes therein, surrendered to the Government of the Dominion for the Crown, subject to a certain qualified privilege of hunting and fishing.

> Held: That by force of the Proclamation, the tenure of the Indians was a personal and usufructuary right dependent upon the goodwill of the Crown; that the lands were thereby and at the time of the Union, vested in the Crown, subject to the Indian title, which was an interest other than that of the Province in the same within the meaning of Section 129.

Mr. MCPHERSON: And which had been reserved to them under that Prolamation.

Hon. Mr. BELCOURT: A defined usufruct.

Mr. O'MEARA: A beneficial title.

Hon. Mr. BELCOURT: Their title means, not fee or anything of that kind; it is a usufruct; a usufructuary interest.

Mr. O'MEARA: Indian title does not mean fee, under any circumstances. It is a beneficial title. Now, Mr. Chairman and hon. gentlemen, the explanation of the point that is giving difficulty is simple. It is to be found in this: That the Royal Proclamation dealing with all lands occupied by the tribes all through the country uses the expression "Reserve." It reserves all that great territory for the Indians. That is the explanation, and that is the reason why that term "Reserve" is used.

Hon. Mr. STEVENS: No one can be surprised that your clients have been misled by your advice.

Mr. O'MEARA: On what point, Mr. Stevens?

Hon. Mr. STEVENS: On all points.

Mr. O'MEARA: Well, if my advice is as sound on other points as it is on this, I think it is all right; because every one who has studied this case knows absolutely that what was dealt with was the large territory that has been occupied by the tribes.

Hon. Mr. STEVENS: They know nothing of the kind.

Hon. Mr. BELCOURT: Will you tell us Mr. O'Meara what is the definition of the word "usufructuary"?

Mr. O'MEARA: Beneficial.

Hon. Mr. BELCOURT: No, it does not mean anything of the kind. It means an entirely different thing.

Mr. O'MEARA: Well, I submit that the word is the same.

Hon. Mr. BELCOURT: No, it has a meaning in law.

Mr. O'MEARA: Usufructuary? I think it will be found in the decisions, and in the judgments that it is used in that sense, Mr. Chairman, but this point that has arisen is more a question of fact than of constitutional law, and once the Committee is satisfied that the facts are according to what I have said, I am quite satisfied.

Hon. Mr. STEVENS: You will be a long time persuading some of the Committee.

Mr. O'MEARA: I will hand this in to the chairman and ask him to look at it himself. I have tried and I will try again to point out that the St. Catherine's Milling case did not deal with reserved lands, in the sense of reserves, such as are ordinarily called reserves. It does deal with the large lands, the lands that have been occupied for a long time under the Proclamation, by the tribes. I will be pleased to have this confirmed before I pass on, because I would not like any hon. member to think for a moment that there is anything misleading about it. The case speaks for itself.

Hon. Mr. STEVENS: It is not misleading. That is your opinion, so I suggest that you go on.

The CHAIRMAN: What we are listening to, is your statement of your case, Mr. O'Meara, on behalf of your clients. We do not deny, nor do we accept, your statement of the case. That is the position of the Committee. We think you should finish as soon as you can.

Mr. KELLY: Mr. Chairman, may I make this explanation? According to the well-defined statement here, it does not refer to lands reserved in the sense of a "Reserve" that we have now; such as for instance "Squamish Reserve," which is a reserve in the ordinary sense of those words; but, the reserved lands referred to in this decision were not set apart as the reserved lands on which Indian villages are situated now. They were rather "Common" lands.

Hon. Mr. BELCOURT: Is it not this: that the "Reserve" reserved the whole territory, and subsequently, this territory was carved up into special reserves, to which a special name was given, but there is no change in title or in interest by that at all. They were subdivided and given certain names, but the title remaining exactly what it was before. Is not that the case?

Mr. O'MEARA: That might be done, but that is not the St. Catherine's Milling case.

Hon. Mr. MURPHY: The report of that decision speaks for itself. Let us go on.

Hon. Mr. STEVENS: That case is well understood.

Mr. MCPHERSON: May I occupy my time by looking over the report of that case, if I may have the book?

Mr. O'MEARA: Certainly. The next matter to be placed before the Committee, Mr. Chairman, is the judgment delivered by their lordships in the Southern Nigeria case.

Hon. Mr. MCLENNAN: We had that before, had we not?

Mr. O'MEARA: The reference has already been given, but I refer to the same case for another matter.

Hon. Mr. STEVENS: That case, Mr. Chairman, is well known to the Committee. Mr. Bennett, who unfortunately is ill just now and unable to be present, referred to it the other day, I think, and merely to state that they claim this case as supporting their argument would be sufficient. I do not think it is necessary to go over it. It is a well established case, and the Committee will know just what value to place upon it.

Hon. Mr. MURPHY: Mr. O'Meara has already stated it.

Mr. O'MEARA: Not on this point. I cited it with regard to conquest. Now, I refer to it and ask attention to the full dealing with the whole subject of native title to be found in that case. As the judgment is quite long, I will

simply refer to the outstanding points of it. First of all let me remind the Committee that in the St. Catherine's Milling case, their lordships were urged to decide what was the exact nature of Indian title, and they declined to do so. It is important to note, that they declined to do so. That which the St. Catherine's Milling case did not do is done by the judgment of their lordships in the Southern Nigeria case. They say that it is necessary to define what is the nature of the native title, and they proceeded to do so. The hon. gentlemen will also find that they, in so many words, refer to title in British Dominions, and not merely in Southern Nigeria, and they make special reference to the matter of Indian title in Canada as included within the scope of the principles which they lay down in this judgment. And, the remaining point is that clearly and explicitly, as I submit, they lay down the principle that in British Dominions, native title to land is of the nature of communal ownership. Their lordships do not use the term " tribal," but use the term " communal." And, they lay down the principle that native title to land in all British Dominions is of the nature of communal ownership. I submit that there is no difference in principle between the word " communal " and the word " tribal." I just leave it at that, Mr. Chairman, but asking that most serious and very special attention be given to the judgment of their lordships in this Southern Nigeria case.

What remains is that I should present some matters connected with the issues existing between the Indian tribes of British Columbia, and the two governments, and I will state just what those issues are, putting each in a very few words.

The first issue is:

(1) Did the Indian tribes of British Columbia have the title that they are claiming before British Columbia entered Confederation.

(2) Whether Article 13 of the terms of the Union had the effect of destroying the native title.

(3) Whether the McKenna-McBride Agreement had the effect of destroying the title of the Indian tribes.

(4) Whether the Indian tribes of British Columbia have ownership of the foreshores in front of the reserves held for their use and benefit. And in that issue there are two sections: One relates to the foreshores in front of Indian reserves, situated upon public harbours, as to which the issue is between the Indian tribes and the Government of the Dominion of Canada. And, the second section consists of a large number of foreshores in front of Indian reserves all along the coast, as to which the issue is between the Indian tribes and the Province of British Columbia.

(5) Have the Indian tribes of British Columbia aboriginal fishing rights in respect of their territories.

(6) Have the Indian tribes of the Province aboriginal hunting rights in respect of their territories.

(7) Whether the Indian tribes have aboriginal water rights in respect of their territories.

(8) Whether the Parliament of Canada has authority for putting an end to the rights of the Indian tribes of British Columbia by means of the enactment that was passed in the year 1920.

(9) Whether, if the power be granted, the Parliament of Canada intended to take away these rights by the passing of that Bill, the enacting of that law.

And another issue, which is connected with what I have just spoken of, relates to the validity of the Orders in Council which have been passed under the Statute or Act of the Dominion of Canada passed in the year 1920, and the similar statute passed by the Legislature of the Province of British Columbia.

Hon. Mr. STEVENS: Is that all.

Mr. O'MEARA: No, not quite all I have a few remarks to make with regard to some of the issues.

With regard to the first, the question of aboriginal title before Confederation, I simply say that in view of the Southern Nigeria case, it is not open to serious doubt. That is my submission.

Hon. Mr. STEVENS: May I ask you this question: In regard to that area which formerly was attached to British Columbia before Confederation, now included in the States of Washington and Oregon, down to the Columbia River, do the Indians south of the Boundary—some of whom belong to tribes I think on either side?

Mr. O'MEARA: Yes, that is right.

Hon. Mr. STEVENS: Do they claim as against the United States Government the title to that property?

Mr. O'MEARA: I know nothing of the details, but my general understanding is that they make the same claim, and also that treaties have been made with them. That is my understanding, that treaties have been made with them.

Hon. Mr. STEVENS: What treaties, and when?

Mr. O'MEARA: I do not profess to have the particulars. I just give my understanding. I know the fact to be, Mr. Chairman, as Mr. Stevens says, that they belong to the same tribe; but I cannot say from personal knowledge whether treaties have actually been made with them, but our understanding has been that they have been made.

Hon. Mr. STEVENS: I have never heard of it, and I would like to know where they are.

Mr. O'MEARA: I base my understanding principally upon this, that pretty well throughout the United States treaties have been made with the Indian tribes.

Hon. Mr. STEVENS: But the ownership of that area—I think it is rather important—was settled as between the United States Government and the British Government.

Hon. Mr. BARNARD: I should think that if this claim was well founded, that tribe would have a claim against the British Government for giving up that territory.

Hon. Mr. STEVENS: I have never heard of that question being brought up. It would be interesting to know how it was dealt with. That area was claimed by the British Crown and was ceded to the United States as a result of the award of 1846. Then there was the San Juan claim; taking San Juan Island. That is within the purview of your investigation, Mr. O'Meara, and if your investigations have been as thorough as they appear, you must know this: do the Indians claim the aboriginal title to San Juan Island?

Mr. KELLY: I do not think there are any Indians living on it.

Hon. Mr. STEVENS: Oh, yes. That is a very fine Island. That Island was ceded by the arbitration award of the Emperor of Germany in 1872. Do you know of any claim there?

Mr. O'MEARA: No, I do not. I have no knowledge of that matter at all. In fact, I do not know where the place is.

Mr. KELLY: It is south of Victoria.

Hon. Mr. STEVENS: It was a famous question at one time. But apparently your studies have been directed to bolster up your own opinions with extracts selected here and there from the documents.

Mr. O'MEARA: May I remark that my duty has been on the consitutional side, and I have relied upon others on the practical side. May I proceed, Mr. Chairman?

The CHAIRMAN: Yes.

Mr. O'MEARA: As to the second question: Whether Article 13 had the effect of destroying the title of the Indian tribes, I submit to the hon. gentlemen that that Article requires to be examined with very great care, and that it will be found that it does not carry the Province of British Columbia as far as the

Province is claiming that it is carried. First of all, as to the effect of the British North America Act, my submission is that not Article 13, but the provisions of the whole British North America Act govern the situation, and if the hon. gentlemen will look at the provisions of that Act, they will find Section 109, which expressly, as we submit, preserves the title of the Indian tribes. It was under Section 146 that British Columbia entered Confederation. Article 13 was a term of the Agreement between British Columbia and Canada, and approved as one of the terms of the Union, but under the exclusive language of Section 146 that Article is subject to Section 109. That possibly, is the outstanding point to bring before the Committee with regard to Article 13; but if we look at the Article itself, even if it should be regarded as an out and out enactment and not subject in any way to the provisions of Section 109, I submit that it does not support the position that has been taken by the Province of British Columbia. The charge of the Indians is given to the Government of Canada. As I submit, that means the administration of Indian Affairs in British Columbia. Then, the trusteeship of lands for the use and benefit of Indians is given to Canada, and that is a very important fact. Then the Article proceeds to provide for the setting aside of lands which shall be conveyed by the Province to the Dominion for the benefit of the Indians. Now, what I submit there is that there is nothing going beyond machinery set up for dealing with this matter of lands; machinery set up to be used by the two governments. I submit that there is not from beginning to end of that Article one word which purports to take away the rights of the Indian tribes.

Then in addition, I have to bring before the Committee a matter of somewhat statutory importance. Before I refer to a case decided by the House of Lords on the point involved, I point out what has been done by that article. The Dominion of Canada becomes a trustee, hon. gentlemen, and I suppose no one will dispute that.

Hon. Mr. STEVENS: A trustee of what?

Mr. O'MEARA: Trustee for the Indian tribes. The trusteeship of the lands reserved for their use and benefit.

The CHAIRMAN: What are you reading from, Mr. O'Meara?

Mr. O'MEARA: I read from Article 13 of the terms of the Union at page 5 on "Trusteeship."

Hon. Mr. STEVENS: Please read correctly what you do read?

Mr. O'MEARA: I will read it.

> The charge of the Indians and the trusteeship and management of the lands reserved for their use and benefit, shall be assumed by the Dominion Government.

Then I point out that the Article goes on to provide for the conveying of lands to be held by Canada in trust to the Indian tribes.

Hon. Mr. BARNARD: Do you contend that that extends to lands other than reserves?

Mr. O'MEARA: No, my submission is, sir, that Canada becomes a trustee in respect of lands.

Hon. Mr. BARNARD: All lands?

Mr. O'MEARA: All lands that are to be held for the Indians; that Canada takes the position of trustee.

Hon. Mr. STEVENS: Let us be clear on that. Let us read it again, and then let us once for all accept the reading of the words:—

> The charge of the Indians and the trusteeship and management of the lands reserved for their use and benefit.

It is so clear that I cannot see the sense—it is annoying to me to hear you go on arguing that that extends to all of the lands.

Mr. O'MEARA: Pardon me. I humbly submit simply this: that Canada took there a position of trusteeship toward the Indian tribes.

Hon. Mr. MCLENNAN: There is no dispute about that.

Mr. O'MEARA: I did not suppose that any one would dispute that. Now, then, the second point is that by that article there was given to the Dominion of Canada a power, and that power was to demand land from the Province of British Columbia.

And my third point is that the result of that Article is also to give to the Secretary of State for the Colonies a power, and that is a power to decide on the lands to be reserved, and the extent of them, in face of the Act, the power to set aside lands, or rather, Canada had the power to demand lands from British Columbia.

Hon. Mr. STEVENS: Let us get that right according to the Article, and not according to your interpretation. "A policy as liberal as that hitherto pursued by the British Columbia Government."

Mr. O'MEARA: Yes, exactly.

Mr. PAULL: Mr. O'Meara's contention, Hon. Mr. Stevens, is this: that article 13 only deals with lands to be reserved as reserves for Indians. It does not touch upon the prior or aboriginal title. It does not touch on that at all.

Mr. OMEARA: The fact is, there is really nothing between Mr. Stevens and myself at all.

Hon. Mr. STEVENS: Except that I would like you to read quotations correctly.

Mr. O'MEARA: I think I have stated my point sufficiently. There is a power conferred upon Canada, and a power conferred upon the Secretary of State for the Colonies. Now, hon. gentlemen, may I ask somewhat special attention to this; and to what has been done under that.

Hon. Mr. STEVENS: What power do you claim is placed in the Secretary of State for the Colonies?

Mr. O'MEARA: The power to finally decide the matter.

Hon. Mr. STEVENS: Decide what?

Mr. O'MEARA: Decide what lands shall be set aside for the Indian tribes.

Hon. Mr. STEVENS: Or reserved?

Mr. O'MEARA: Reserved, set aside and conveyed.

Hon. Mr. STEVENS: According to the policy hitherto carried on by the British Columbia Government?

Mr. O'MEARA: According to the policy, hitherto, yes. Now, before referring to the authorities upon that, I have two matters that relate to the facts of the case, to bring before the Committee. The first is that I submit to the Committee some brief historical evidence answering the contentions that there were certain limited lands to be set aside because at a certain time, British Columbia set aside 20 acres per man and so on. I propose to give historical evidence to show that up to the year 1864, in which year Sir James Douglas seems to be Governor of the two Colonies—up to that time, the Colonial policy was radically different. That is my first point that I wish to bring before the Committee. I have here some brief extracts from historical evidence establishing that, and I will hand in this paper. It all consists of historical evidence, but I will read certain parts of it that are the most material. Here is a despatch from the Secretary of State to the Colonies to Governor Douglas, dated the 31st July, 1858.

The CHAIRMAN: Where is that despatch to be found?

Mr. O'MEARA: I have taken this from the records in the Parliamentary library. They are there in big volumes, and I have taken this very brief extract from it.

The CHAIRMAN: Can you give the number of the volume and the page?

Mr. O'MEARA: I have the date here: The 31st July, 1858. It is easily available. They are in the form of books of considerable size. I will take the burden of producing anything of that sort if the Committee desire it produced.

Hon. Mr. STEVENS: What is that, Lord Lytton's instructions?

Mr. O'MEARA: It is a despatch from the Secretary of State for the Colonies. I do not know whether he was Lord Lytton at that time.

Hon. Mr. STEVENS: I think so.

Mr. O'MEARA: Possibly.

The CHAIRMAN: How are we to know that your quotation is correctly extracted?

Mr. O'MEARA: I will undertake to produce the original. My quotation has been taken from the actual historical record that is in the Parliamentary library, and perhaps for my immediate purpose, the Committee will allow me to undertake to bring that book here if necessary. The records are sessional papers, and all that sort of record. This is in the year 1858. I appreciate the point, Mr. Chairman and hon. gentlemen, and I am willing to take the burden of producing right here all these actual records Perhaps the Committee, with that undertaking, will permit me to read these few words from them.

Hon. Mr. STEVENS: Our experience hitherto has not been very satisfactory about that sort of thing, Mr. O'Meara.

Hon. Mr. McLENNAN: Let us hear it and get on.

Mr. O'MEARA: This is rather important historical evidence, Mr. Chairman. May I read it? It is very short. This is what he said to Governor Douglas:

> Let me not omit to observe that it should be an invariable condition in all bargains or treaties with the natives for the cession of lands possessed by them, that subsistence should be supplied to them in some other shape.

Now, hon. gentlemen, it has been advanced and advanced over and over again as an outstanding proposition in connection with this Indian land question, that while on Vancouver Island certain things were done by way of conceding that there was an Indian title, nothing whatever of that sort was done in respect of the mainland. That is a contention that has been very strongly made. Now will honourable gentlemen notice that the date on which this despatch was conveyed from London to Governor Douglas was the very day on which the Royal assent was given to the bill by which as an enactment the Colony of British Columbia, the mainland colony, came into existence.

Hon. Mr. STEVENS: When was that?

Mr. O'MEARA: The 21st July, 1858, on the day on which the Royal assent was given to the Act which created the mainland colony of British Columbia, the Secretary of State for the Colonies sent this despatch to Governor Douglas. And allow me to go on to point out that that despatch, in so many plain words, recognizes the necessity of making a treaty with the natives for the concession of lands possessed by them. And let me also point out—

Hon. Mr. STEVENS: Of course that is an assertion of yours.

Mr. O'MEARA: It is this language.

Hon. Mr. STEVENS: No, let us make that clear. I object, Mr. Chairman, to this claim that these things are proved.

Mr. O'MEARA: I submit the language used to the Committee to judge.

Hon. Mr. STEVENS: I have another part of it before me, which indicates something altogether different. If we had the whole of the dispatch here it would be quite different from an isolated quotation. The whole of the dispatch from the Secretary of State for the Colonies to Governor Douglas, of 1858, indicates that the British authorities had been up to that time in full possession of British Columbia, administering it as a colony. In this dispatch, Sir James

Douglas is made Governor, and he is asked to inaugurate institutions for the good government of the country. They sent out a royal survey party to survey the very lands which he is talking about, which was done. Two or three years later, the lands that were so surveyed were put up to public auction, to whomsoever wanted to buy them, and were so sold with a Crown title. That is altogether different from what Mr. O'Meara is trying to show is the effect of that dispatch.

Mr. O'MEARA: Mr. Chairman and gentlemen, I think that must be a different dispatch.

Hon. Mr. STEVENS: No. I cannot help but object, Mr. O'Meara, for what is a common practice of yours of taking a simple sentence and erecting upon it a claim for your clients, a claim which is so serious that it will affect every particle of land in British Columbia if your claim is sustained, and which is not sustained by the very document from which you presume to quote.

Hon. Mr. MURPHY: To how much land in British Columbia does your claim of title apply?

Mr. O'MEARA: To all the lands in the territory comprised by the claims of the aboriginal claimants. The claim is only a tribal claim and not a claim for absolute title.

Hon. Mr. MURPHY: What area is affected?

Mr. O'MEARA: Mainly, the whole of the area that has been stated in the formal documents.

Hon. Mr. MURPHY: I want you to state it here now.

Mr. O'MEARA: I would ask Mr. Kelly to state that.

Mr. KELLY: According to the paper filed, or the memorandum, some 251,000 square miles have not been surrendered.

Hon. Mr. MURPHY: I want to know what is the claim of the Indians? What territory does the claim of the aboriginal Indians cover?

Mr. KELLY: 251,000 square miles.

Mr. MURPHY: And that is Mr. O'Meara's claim on behalf of the Indians still.

Mr. O'MEARA: Yes.

Hon. Mr. STEVENS: Which includes all the lands, including Prince Rupert, Vanvouver, and all these areas which according to the records were settled, long before Confederation, by the whites, and the surveyed Crown title given to the properties. I want this Committee to appreciate really what this means. Once that claim is admitted. I object, Mr. Chairman, to the frivolous manner —and I use that word advisedly—in which Mr. O'Meara quotes excerpts from the documents to support that serious claim, without supplying all the documents or the context from which his quotations are taken.

The CHAIRMAN: The Committee wishes Mr. O'Meara to finish his statement.

Hon. Mr. MURPHY: Yes.

Hon. Mr. MCLENNAN: He has undertaken to produce those documents—

The CHAIRMAN: And if he does not produce them?

Hon. Mr. MCLENNAN: Then the application should not be considered.

Hon. Mr. STEVENS: Mr. O'Meara says, "Here is a document which was presented to Parliament," and he produces it as proof of the claim of the Indians and as having been accepted by this Committee. I will not allow that to go out without my protest.

Mr. O'MEARA: I appreciate the remarks of Mr. Stevens. May I suggest to him that he exercise a judical mind.

Hon. Mr. STEVENS: Oh, I have had twenty years of your nonsense, and I am tired of it.

The CHAIRMAN: We want the original document, and do not want your notes of what the document contains.

Mr. O'MEARA: I will undertake to get them.

The CHAIRMAN: We do not want the undertaking, but we want the original document here now.

Mr. KELLY: That is the order of the Committee.

Mr. O'MEARA: It will take more than ten minutes to get it, I am afraid.

Hon. Mr. BARNARD: While Mr. O'Meara is getting the document, Mr. Kelly, I would like to hear for my own information something on the question, apart from the question of aboriginal title altogether—conceding for the sake of argument that it exists—how the position of the Indians, their course of conduct during all these years in accepting the benefits of The Indian Act, benefits which were not given to any other subjects in this country, and their occupation, and so on, is consistent with their now making a claim with regard to the aboriginal title? Surely they cannot have it both ways.

Mr. KELLY: Quite so. I think the point raised here is this, if a thing that has been going on and accepted did not do away with what had existed before, —that is the point you are making?

Hon. Mr. BARNARD: Yes, I would like to know what your suggestion is with regard to it.

Mr. KELLY: It is quite true that that is a matter of fact, and we do not question it for a moment, that the Indians of British Columbia have been treated as generously as other Indian tribes throughout the rest of the Dominion. But within recent years, shall I say during the past twenty-five to thirty years, Indian tribes have become curtailed in their activities. You know as well as I do, Senator Barnard, that they were a law unto themselves and roamed the forests and went wherever they wanted to go; they were the lords of all they surveyed. With the settling up of the country these rights were curtailed, naturally; and as they became curtailed more and more and as the fishing rights were interfered with and their hunting rights began to be interfered with, and regulations restricting their activities became more apparent, their thoughts naturally went back to the days when they were the lords of the land; and upon consulting advisers here and there, even as white men do, it came to the surface that their title had not been ceded.

If it had not been ceded, then, in view of the facts that their ancient rights were taken away, why should not a formal recognition be made and a consideration equivalent to that conceded to other tribes of Indians in other parts of the Dominion be granted to the Indians of British Columbia? That was at the back of all this trouble. I hope I have answered you.

Hon. Mr. BARNARD: Your answer appears to make it clear in this way, that the Indians accepted the situation as it was, accepted the benefits, and then, when they found out that the thing was not working out to their satisfaction, they want to go back on the deal, have all the expenditures and get the lands. It seems to me that this is what your argument amounts to, Mr. Kelly.

Mr. KELLY: Not exactly.

Hon. Mr. BARNARD: You know what estoppel is in law?

Mr. KELLY: I must confess I do not.

Hon. Mr. BARNARD: If two men act as if a contract were in existence, act mutually upon it, they cannot afterwards deny that it did exist.

Mr. KELLY: Provided a bargain has been struck?

Hon. Mr. BARNARD: No.

Hon. Mr. STEVENS: That is a principle of law which is very important which Mr. Barnard has suggested. Independent of written law or law courts, where two men, who may be wholly ignorant of the law, by mutual assent, go on on a certain line, share certain benefits, and so on, that becomes in the eyes of the courts a law or has the effect of a contract.

Mr, HAY: That is, you cannot take the benefits of another man's action and deny that that party has a part in the contract. Your action estops you from raising that objection.

Mr. KELLY: I understand you now. With the exception that the Indian, as quoted by the Chief the other day, had been told, "If you are not justly dealt with, if you are not satisfied, the King or the Queen will set this matter right." As pioneers, I suppose, all over the country know, the Indian had a great deal of faith, especially in the Queen, because she reigned the longest and they heard of the Queen so often. The Queen would set the thing right. Even if there had been wrong done by Government officials, the matter would ultimately be set right, and believing in that, they went on acquiescing in the matter all the way through until the pinch began to hurt a little more, and they woke up to the fact that perhaps after all the Queen was not very much concerned with them if they did not make a noise and draw attention to their grievances. That was the situation.

Hon. Mr. STEVENS: I think most of us who are well acquainted with British Columbia know that there have been many instances where the Indians have justifiable grievances; but I think all the evidence submitted by Paull and yourself and others here on behalf of the Indians indicate that from time to time the Governments, Provincial and Dominion, but chiefly Dominion, have recognized this and have sought to adjust these grievances. I think the Committee would be prepared to admit that there are some grievances still existing which we would like to smooth out or iron out, but I would like to ask you this, has it not been in the last fifteen or twenty years that there has been an actual claim for aboriginal title arising?

Mr. KELLY: Quite so; something about that length of time, since it has taken a definite form of a legal claim. Before that time it was a sort of a general claim.

Hon. Mr. STEVENS: I recall very well the first meeting that Mr. O'Meara had in British Columbia, at which he formed the society for the protection of the Indians; and that claim was not even set forth then. It was the other claims set forth in your petition; that is, that the Indians were deprived of some of their rights in regard to hunting, fishing, and so on; and also that they were too much restricted. That was the basis of his claim then. But later, if I recall rightly, around 1913 or 1914, there arose this claim about aboriginal title.

Mr. KELLY: About that; I think it started in 1911, to be exact. Of course, you must admit that no man can make a claim unless he can support it after careful research into the records of the country and into the law records, to see that his claim is substantiated before it can be made a paramount issue and be brought before those who are responsible.

Hon. Mr. STEVENS: But in making a claim of that kind, very great care ought to be taken to base such a claim upon very sound documents and contentions.

Mr. KELLY: Speaking as a layman, as far as I have been aware, I have always understood that the support that we have for our claim was a good one. And is it not a fact that in legal procedure this is the practice, to do as Mr. O'Meara has been striving to do, to support his contention by making quotations from this authority and from that authority? Why is it objected to in this case?

Hon. Mr. STEVENS: Because he does not quote correctly.

Mr. PAULL: May I be allowed to interrupt for a moment? There is a book that has been published many years ago, which contains all the dispatches in colonial days with the Imperial Government. All of those dispatches are contained in that book and we have been trying all the time since I have been associated with this matter to get a copy of it. I have been to the Depart-

ment, and Dr. Scott could not let me have it. I have been to the Library, and they have not got it there. I know that Commissioner Ditchburn has that book; and I would ask to have access to it.

Hon. Mr. STEVENS: I thought Mr. O'Meara told me he could get production of the book.

Mr. KELLY: He is not its custodian.

The CHAIRMAN: He ought to know, as your counsel, that he should not quote from something which he cannot produce.

Hon. Mr. MURPHY: Is the book in this room?

Mr. SCOTT: I have no copy of this book, but this one for myself. I have no objection to allowing them to look at this book. I thought Mr. O'Meara was referring to something original from the Imperial Government.

Mr. PAULL: That is why we could not get it, it is not available in the Library.

Mr. KELLY: The point is that the quotation was made from a book which was in the Library, but somebody has taken that book from the Library since, and it cannot now be procured there.

Mr. DITCHBURN: I do not want that book to be put in and impounded. It is my personal copy and I do not know where to get another copy of it.

Hon. Mr. STEVENS: Read the section into the record, and then you will have it.

The CHAIRMAN: We want you to read what you are referring to now, Mr. O'Meara, into the record, because the book from which you are taking it belongs to the Indian Department, and they have only one copy of it, and they cannot let it go.

Mr. O'MEARA: I have already given the particulars, have I not?

Hon. Mr. STEVENS: No.

Hon. Mr. MURPHY: It is a despatch from Lord Lytton?

Mr. O'MEARA: (Reading):

This is an Extract from a despatch from the Right Hon. Sir E. B. Lytton, Bart., to Governor Douglas, dated 31st July, 1858.

> 3. I have to enjoin upon you to consider the best and most humane means of dealing with the Native Indians. The feelings of this country would be strongly opposed to the adoption of any arbitrary or oppressive measures towards them. At this distance, and with the imperfect means of knowledge which I possess, I am reluctant to offer, as yet, any suggestion as to the prevention of affrays between the Indians and the immigrants. This question is of so local a character that it must be solved by your knowledge and experience, and I commit it to you, in the full persuasion that you will pay every regard to the interests of the Natives which an enlightened humanity can suggest. Let me not omit to observe, that it should be an invariable condition, in all bargains or treaties with the natives for the cession of lands possessed by them, that subsistence should be supplied to them in some other shape, and above all, that it is the earnest desire of Her Majesty's Government that your early attention should be given to the best means of diffusing the blessings of the Christian Religion and of civilization among the natives.

Hon. Mr. MURPHY: Is that the whole of the despatch?

Mr. O'MEARA: That is the whole of what is described here as an extract from a despatch. It is paragraph No. 3, an extract from a despatch set out in this book, and it so appears in the record as I have given it.

Hon. Mr. MURPHY: That is all that is contained in that book, of that despatch?

Mr. O'MEARA: Yes, that is all that is contained in this book, from that despatch.

The next despatch to which I refer is a despatch from the Colonial Secretary to the Chief Commissioner of Lands and Works, dated the 5th March, 1861. It is to be found in the same book.

Hon. Mr. STEVENS: The Commissioner of Lands and Works, of British Columbia?

Mr. O'MEARA: Yes, that means the officer of British Columbia:—

The Colonial Secretary to the Chief Commissioner of Lands and Works

NEW WESTMINSTER, 5th March, 1861.

SIR,—I am directed by His Excellency the Governor to request that you will take measures, so soon as may be practicable, for marking out distinctly the sites of the proposed Towns and the Indian Reserves throughout the Colony.

2. The extent of the Indian Reserves to be defined as they may be severally pointed out by the Natives themselves.

I have, &c.,

(Signed) CHARLES GOOD,
for Colonial Secretary.

That, Mr. Chairman, was the principle on which reserves were then to be set aside.

Hon. Mr. STEVENS: Presumably that was done.

Mr. O'MEARA: The next letter bearing on the matter is a letter from Mr. B. W. Pearse to the Chief Commissioner of Lands and Works, dated the 21st October, 1868. I think this is in the same book.

Hon. Mr. STEVENS: It is at page 53.

Mr. O'MEARA: The letter is a report upon the declining of reserves in the Lower Fraser Valley. Mr. Pearse says that he went in company with the Stipendiary Magistrate, and he gives this as the result of it. I quote the following words:—

> The principle kept in view was to give them from ten to twenty acres for each adult in the tribe, and an extra quantity for those possessing stock or horses. This will throw open about 40,000 acres for settlement by white men.

Now, gentlemen, may I submit to you the position as shown by this historical evidence?

Hon. Mr. STEVENS: Just a minute. We will read a little more, Mr. Chairman. I will read the despatch or report.

The CHAIRMAN: May we know first exactly what the document is?

Hon. Mr. STEVENS: Yes. It has been put in as Mr. O'Meara has taken an excerpt from it. I would like to read a little more bearing on this question:—

Mr. Pearse to the Chief Commissioner of Lands and Works

LANDS AND WORKS DEPARTMENT,

21st October, 1868.

SIR,—I have the honour to inform you that in compliance with instructions I proceeded in company with Captain Ball, Stipendiary Magistrate, to define precisely on the ground the limits of the various reserves for the Indians on the Lower Fraser. This was done by marking trees or planting posts on each frontage, and making accurate sketches for the guidance of the surveyor. The chiefs of the various villages were with us in nearly every case, and with one exception (that of Who-nock), expressed themselves thoroughly satisfied with the lands allotted to them.

We took great care to include their potato grounds in every case. Where doing so would have involved too large an undivided area, we gave them a second lot. The principle kept in view, was to give them from ten to twenty acres for each adult in the tribe, and an extra quantity for those possessing stock or horses. This will throw open about 40,000 acres for settlement by white men. We left Mr. Launders to run the lines and complete the survey of the river line.

In our reconnaissance in the Chilliwhack District we were accompanied by nearly all the settlers, some sixteen in number, who were very useful and obliging in pointing out McColl's and other surveyors posts.

That gives me an altogether different impression from that which would be left by Mr. O'Meara's partial quotation. It will be noted that this report says that the chiefs of the various villages were with them in nearly every case, and that with one exception, they expressed themselves as thoroughly satisfied with the land allotted to them.

Mr. O'MEARA: That does not speak, Mr. Stevens, of the cutting down of the larger reserves. It refers to new matters, does it not?

Hon. Mr. STEVENS: It speaks for itself, and requires no further comment. I have not read the whole despatch, but I have read all that seems to be of any particular interest.

Mr. O'MEARA: Gentlemen, I am not discussing the merits in any manner of that sort. I quote this for the limited purpose of proving by historical evidence, that the Colonial policy up to the year 1864 was very different from that which has been relied upon as the foundation of Article 13, and I submit that the evidence is conclusive upon that.

Mr. MCPHERSON: This was before 1864?

Hon. Mr. MCLENNAN: It was 1868.

Mr. O'MEARA: Up to 1864, Sir James Douglas was Governor. He was the Governor to whom the Imperial despatch was sent of the 31st of July, 1858, recognizing completely as I submit the necessity for treaties securing cessions of lands from the natives, and as a matter of fact, as shown openly by the Statute, Governor Douglas proceeded under that to set aside large reserves for the Indian tribes.

Mr. MCPHERSON: Why would they set aside reserves on that occasion, and have the boundaries marked with the consent of the Indians, unless the Indians were consenting to release the balance of the lands?

Mr. O'MEARA: I appreciate that point, sir. But, I am going to refer to what is quite strong evidence on that subject, namely the petition of the Lower Fraser tribe presented on the 14th of July, 1874. I think that is already in evidence before the Committee. That shows the great dissatisfaction of the Lower Fraser people.

Hon. Mr. BARNARD: That is thirteen years later.

Mr. O'MEARA: 1874.

Hon. Mr. STEVENS: Which was subsequently met and adjusted. I would like to point out before we leave this, that in this report of Pearse just referred to, it will be noted that the Indians were taken along when the surveys were made, which is in harmony with the instructions of the Secretary of State for the Colonies, given in the despatch quoted a moment or two ago, to Sir James Douglas. In other words, the Government of British Columbia at that time was apparently carrying out the instructions of the home Government, in consulting the Indians regarding these adjustments.

Mr. O'MEARA: I submit that on the historical evidence it is perfectly clear that there was a radical change in policy as to setting aside lands when Sir James Douglas quitted office, and one result is shown here in the throwing open of 40,000 acres of land in one locality for the white people. My purpose is not to go into the merits of all that, but to point out that it has a bearing upon

Article 13 of the Terms of Union, and that it cannot safely and soundly be argued that the Imperial Government and the Government of Canada were intending to continue the sort of policy that there was from 1864 to 1871. It is quite as reasonable to suppose that those Governments had in view the policy that was in force up to the year 1864; and that remark, as I submit, applies with special force to the Imperial Government, because naturally the Imperial Government would consider that those early despatches had been carried into effect.

The other important matter of fact to which I need to refer is that the practice of the two Governments since Confederation has been on the principle of sitting down and making an agreement; coming in some way to an agreement as to the quantity of land to be set aside for Indians in British Columbia, to be conveyed by the province to the Dominion. That principle was acted upon in the early days, and that principle has been acted upon under the McKenna-McBride agreement, and after all the work of the Royal Commission. It is all completed and before the two Governments; and what is done as a matter of principle is that the two Governments sit down at a table and agree that those findings shall be the end of everything, and say, "Those are the lands for the Indians." Now I point out and submit very strongly, Mr. Chairman and hon. gentlemen, that in carrying that out a wrong principle has been acted upon, and that the Dominion of Canada and the province of British Columbia have no constitutional power or authority for settling the matter of lands by that means. I submit—at the moment without referring to the authorities on the subject—as a matter of principle that there being the trusteeship of Canada for the Indians, for the whole of that province, there being the power of Canada to demand adequate lands for the Indians of British Columbia—

Hon. Mr. STEVENS: Where do you get that from?

Mr. O'MEARA: From Article 13.

Hon. Mr. STEVENS: Well, it is not there.

Mr. O'MEARA: I am humbly presenting my submission as to the effect of that article.

Hon. Mr. MURPHY: This is his argument upon that Article.

Hon. Mr. STEVENS: It is not there.

Mr. O'MEARA: I submit that that is the effect of it, the right to demand lands from British Columbia, and that there is a power conferred upon the Secretary of State for the Colonies to deal with that matter. And, on principle only for the moment, I submit that the Dominion of Canada as trustee was under obligation to exercise that power, because at the very bottom of trusteeship, you will find obligation, and that is the principle upon which trusteeship is based, that there is an obligation on the part of the Dominion of Canada for carrying out that, and for demanding the lands from British Columbia. That is what I submit. And therefore on behalf of the tribes of British Columbia, I humbly submit that those powers, or that power, possessed by the Dominion of Canada for demanding lands, and the power of the Secretary of State for the Colonies settling the matter, are continuing powers, and that what has been done by the McKenna-McBride Agreement has not destroyed those powers, but they are continuing to-day.

Hon. Mr. STEWART: In the first place you say that the Dominion of Canada has the power to get the land, and then you say, if they do not get the land, the Secretary of State steps in?

Mr. O'MEARA: I am saying the Dominion of Canada is trustee under Article 13, and that, as trustee, there is conferred upon Canada the power to demand adequate lands from the province of British Columbia.

Hon. Mr. STEWART: Quite right.

Mr. O'MEARA: And that there is also created by that same instrument —Article 13—a power on the part of the Secretary of State for the Colonies to give the final word upon such demand.

Hon. Mr. STEVENS: Again I must call the attention of the Committee to the fact that it is a policy as liberal as that hitherto pursued by the British Columbia Government which shall be continued by the Dominion Government after Union. The basis of the Dominion Government treatment is a liberal policy, or a policy as liberal as that of the Colony before the Union.

Mr. MORIN: Is not your argument inconsistent with that, Mr. O'Meara?

Hon. Mr. STEWART: The Dominion Government is to have the land, and it is to have adequate land. Is not that the basis?

Mr. O'MEARA: May I remind the hon. member that, in the document now before this Committee, if my memory is correct, the Minister of the Interior of 1874 declared in very emphatic language that Article 13 was fully inadequate for meeting the situation, and he used very strong language as regards that.

Mr. MCPHERSON: Was that that the provisions of the Provincial Government prior had not been adequate?

Mr. O'MEARA: Well, he speaks very strongly on that subject.

Now, Mr. Chairman, I wish to submit to you an authority upon that subject which I shall submit is quite conclusive. I refer first, to a case decided by the House of Lords, and reported in Scott's Appeal Cases. First, Weller vs. Ker reported in Law Reports Scotch Appeals, Volume 1 at page 11. I refer to that as an authority but I leave that there because in a subsequent case, there has been made a very useful statement of the principle for which I am contending at this moment. I give this as the authority of the House of Lords, for the proposition that a power of that sort is a continuing power, and cannot be destroyed by any mere agreement. I refer also to this case in which the principle has been laid down, decided in the Chancery Division of the High Court of Justice in England, by Mr. Justice Kay. It is to be found in the Law Times reports Vol. 49 at page 259. I shall read a few words from the judgment of Mr. Justice Kay:

> It is argued that by this release the power even if simply collateral is entirely destroyed under Section 52 of the Conveyancing Act of 1881. Assuming that this would be the case as to an ordinary collateral power, the first question is whether if it be a power given to trustees coupled with a duty it could be so destroyed, and I am clearly of opinion that in equity it could not, if that be the nature of the power. A trustee who has a power which is coupled with a duty is, I conceive, bound so long as he remains trustee, to preserve that power and to exercise his discretion as circumstances arise from time to time whether the power should be used or not, and he could no more by his own voluntary act destroy a power of this kind than he can voluntarily put an end to or destroy any other trust that may be committed to him.

Hon. Mr. STEVENS: What are you quoting from now?

Mr. O'MEARA: Mr. Justice Kay's statement of the principle. The case is "In re Eyre."

Hon. Mr. STEVENS: That is a case of a trusteeship of an individual, of a minor, the same as this other case you quoted.

Mr. O'MEARA: It is a trusteeship, and that is the principle.

Hon. Mr. STEVENS: Of an individual.

Mr. O'MEARA: Yes, of an individual.

Hon. Mr. STEWART: If it is on trusteeship generally, as far as we are concerned, we might accept it. We are not questioning the power of a trustee, not for a moment.

Hon. Mr. MURPHY: Mr. O'Meara is drawing a distinction between a trusteeship and a guardianship. He is arguing that the position of the Dominion of Canada is that of a trustee, and not that of a guardian.

Mr. O'MEARA: The case is:

In re Eyre; Eyre vs. Eyre.

Upon the next issue, as to whether the McKenna-McBride agreement destroyed the land rights of the tribes in British Columbia, I submit that it did not. I submit that there is nothing whatever to be found in Article 13 which could be relied upon as empowering the two Governments to go to the length of making an agreement for the adjustment of all matters in British Columbia, relating to Indians and their affairs in British Columbia, by means of that agreement. I submit that article 13 has nothing in it to authorize the two Governments to do that.

Hon. Mr. STEWART: Mr. O'Meara in a word you say the two governments have not the authority to settle Reserve questions?

Mr. O'MEARA: No, Mr. Stewart, very different to that is my submission.

Hon. Mr. STEWART: Then, I do not know what it means if it does not mean that.

Mr. O'MEARA: If the McKenna-McBride agreement was limited to the putting in operation of the machinery for conveying lands to Canada for the Indians, or in other words, for creating what we call reserves, then my point would not apply; but I humbly submit that when the two Governments sit down and put in that language, that the carrying out of that arrangement shall be a final adjustment of all matters relating to Indian Affairs in British Columbia, they did that which they had no authority under Article 13 to do.

Hon. Mr. STEVENS: It does not say that.

Mr. MCPHERSON: Your submission then is that the Dominion Government, as trustees for the Indians, as alleged, had no right to enter into an agreement to settle the interest of those Indians with the province.

Mr. O'MEARA: Yes, sir, certainly.

Mr. MCPHERSON: You do not need to repeat it, if that is the contention. Therefore, at no time could they finally settle the Indians' rights as their trustees.

Mr. O'MEARA: As a trustee, yes. If it could be established that they were in the position of guardians, and the Indians had become wards, then there would be something in your contention.

Mr. MCPHERSON: I am not contending, I am taking your own contention.

Mr. O'MEARA: My own submission is that they are absolutely trustees, and the relation is that of trusteeship, and that there was no power under article 13 for the two governments to go the length of providing for the final adjustment of matters relating to Indian affairs in British Columbia.

Mr. MCPHERSON: Then to follow that up; if they have no power to make a settlement on behalf of the Indians as trustee, then they have no power now to do it without the consent of the Indians.

Mr. O'MEARA: Exactly, that is my submission.

Mr. MCPHERSON: Then if the Indian is controlling his own affairs, why is the Dominion Government the trustee and not the guardian?

Mr. O'MEARA: I humbly submit that a trustee may be a trustee for certain persons, and I submit that trusteeship is radically different from guardianship.

Mr. MCPHERSON: I do not see how that applies to one side of the dilemma and not to the other.

Mr. O'MEARA: I am arguing upon the basis of the relationship being that of trustee.

With regard to the next issue, whether the Indian tribes have the ownership of the fore-shores in front of their reserves, I put in a short memorandum on that subject, which will be found in this record, and which states the position in regard to the fore-shores. I am not going to add to that. I ask that it be received and made a part of the record. It is a statement presented in Victoria regarding the fore-shores in front of Indian reserves.

Hon. Mr. MURPHY: What date?

Mr. O'MEARA: In the month of August, 1923.

Hon. Mr. STEVENS: Presented by yourself?

Mr. O'MEARA: By myself as general counsel of the Indian tribes. I put that in as part of my argument.

The CHAIRMAN: Was that at a meeting?

Mr. O'MEARA: Yes, between Dr. Scott and myself and others.

Dr. SCOTT: That was the meeting in August, 1923, in Victoria. I allowed Mr. O'Meara to put in his argument on " fore-shores," instead of listening to it.

Hon. Mr. MURPHY: We have that filed then.

Mr. KELLY: I might say, Mr. Chairman, that this meeting was an important meeting, held at the request of the Minister of the Interior; it was an official meeting.

Mr. O'MEARA: As to the next issue, whether the tribes have aboriginal fishing rights, I do not require to go into that. I simply put it before the Committee.

Hon. Mr. MURPHY: What do you mean by aboriginal fishing rights? Do you mean by that unrestricted fishing rights?

Mr. O'MEARA: Yes, fishing rights that would extend to their territory, the territory they had 200 years ago.

Hon. Mr. STEVENS: Without restriction or control by white men?

Mr. O'MEARA: Yes, without restriction, absolutely. That was their aboriginal title.

The next issue is whether they have aboriginal hunting rights, the same applies to that. But with regard to that matter, may I point out to the hon. gentlemen that an exceedingly important issue exists, and that is whether the Province of British Columbia has legislative authority for enacting restrictions upon Indian hunting rights. The Indian tribes of British Columbia, or the allied tribes, submit that the Province of British Columbia has not such legislative authority; and it will be found, gentlemen, that their submission is very strongly supported by decisions that have been given, which can be quoted by authoritative sources here in Ottawa. For the sake of brevity, I am merely indicating what the position is and am not going into that, which in itself is a large matter. But, before going on, may I point out this, which I submit is a rather important consideration: the position has been taken and has been brought up at this committee, during this sitting, that Canada is offering to the British Columbia tribes all that has been given to the tribes of the rest of Canada. Let me respectfully point out that, with regard to the hunting rights, the position is this: in some of the most important treaties relating to other parts of Canada, as no doubt Dr. Scott will agree, in, for instance, the Robinson Huron Treaty and the Robinson Superior Treaty, and also in several of the most important treaties in Western Canada and Northern Canada, a part of the treaty is the reservation of hunting rights to the Indians. So that just as the lands are reserved to them under the Treaty, the hunting rights are reserved to them.

The Dominion of Canada unfortunately is not in a position to offer to do that in British Columbia, because the Province claims two things. It claims that the McKenna-McBride agreement under the constitution is a final adjustment of all matters relating to Indian affairs in British Columbia; and the Province also claims that the Provincial Legislature can validly enact every

restriction desired upon Indian hunting rights. I submit that for the consideration of the Committee.

Hon. Mr. MURPHY: When you began this last argument did I understand you to draw a distinction between the treatment accorded the Indians of British Columbia in regard to hunting rights, and the treatment accorded Indians elsewhere in Canada.

Mr. O'MEARA: The suggestion is official and on the records, that Canada is saying to the tribes of British Columbia, "We will give you everything that has been given to the tribes in the rest of Canada." I am pointing out that in regard to hunting rights Canada is not in a position to do that, because British Columbia says that there has been a final adjustment of all matters in connection with Indian Affairs, and yet, when you go into other parts of Canada, hunting rights have been reserved by treaties.

Hon. Mr. STEWART: Reserved by treaty?

Mr. O'MEARA: Under the treaties.

Hon. Mr. STEVENS: Do you suggest that in other parts of Canada the Indians have all their original rights of hunting?

Mr. O'MEARA: No, because the matter has been matter of controversy.

Hon. Mr. STEWART: Because that would be an absolutely absurd statement to make, if it refers to lands which are not Crown lands.

Mr. PAULL: If I might answer that, by some treaty in Vancouver Island, between some Indians and the Hudson Bay Company, on April 29, 1850, "with the small exceptions becomes the entire property of the white people forever. It is also understood that we are at liberty to hunt over the unoccupied lands and to carry on our fisheries as formerly." That was the agreement entered into between the Hudson Bay Company and some tribes on Vancouver Island. Our submission is that now we cannot fish and we cannot hunt on these lands.

Mr. DITCHBURN: I think you ought to take into consideration that there are no unoccupied lands in that part of the country. Now those are all privately owned lands.

Hon. Mr. STEWART: And the same thing applies in Ontario.

Hon. Mr. STEVENS: It makes a reasonable claim almost hopeless to put up any preposterous claims with it.

Hon. Mr. MURPHY: There can be no shooting in Vancouver streets.

The CHAIRMAN: Have you finished, Mr. O'Meara?

Mr. O'MEARA: No, not yet, Mr. Chairman. I have promised to be as brief as possible, but there are some important matters yet to be put before you. I submit these hunting rights are important.

Hon. Mr. MURPHY: You have stated them anyway.

Mr. O'MEARA: Yes. With regard to general rights, the only other issue is have the aboriginal tribes original water rights? I want to put a very important statute of British Columbia before this Committee. Will Mr. Paull put it in?

Mr. PAULL: Mr. Ditchburn put that in already.

Mr. O'MEARA: But may I point out that the final section of that statute in so many words enacts that aboriginal water rights shall not be recognized in British Columbia. I ask special attention to that enactment of the Province, showing the position which the province takes on this whole subject of the rights of Indian tribes.

Hon. Mr. STEVENS: That statute is all in. Mr. Ditchburn put it in.

Mr. PAULL: It is chapter 19 of the British Columbia Statutes of 1921.

Mr. O'MEARA: The next two issues honourable gentlemen, as I shall submit, are of all the most important issues to be placed before this Committee; and at the same time I hope to be able to put them before you in not more than ten minutes. Those relate to the law of 1920, which, as I submit under the memorandum before you now, is regarded as a sort of a vise in which the Indian tribes are held and in which even the Dominion Government is preventing any

further action whatever. There is the heart of this whole trouble, as I submit. There is the greatest difficulty standing to-day in the way of a real adjustment; this law of the year 1920, which it is claimed carries into effect the McKenna agreement, which says in so many words that the carrying out of this agreement shall be a final adjustment of all matters relating to Indian affairs in British Columbia.

Hon. Mr. MURPHY: Are you referring to the British Columbia Act?

Mr. O'MEARA: No, to the Dominion Act of 1920.

Hon. Mr. STEVENS: You have already stated that twice.

Mr. O'MEARA: I will state them and state them shortly. First of all, let me refer to a very important judgment of the Judicial Committee of the Privy Council in what is known as the Burrard case. Mr. Paull will give you the reference. The Burrard case, which related to water rights, was a case of the Burrard Power Company vs. The King, found in L.R. (1911) A.C. 94.

Hon. gentlemen will find that case most distinctly lays down the principle that such rights as water rights depend upon the title to the land itself. There is the principle upon which the Burrard case is based; and I humbly submit that that has a tremendous application to this position regarding the Indian tribes, because it means this, if the tribes have the actual beneficial territorial rights which they have always claimed to have and are claiming to-day to have, then, according to the Burrard case, they have fishing rights and hunting rights and water rights. They have these because they have an actual beneficial title to their territories. And if they have not that title, then they have not the rights. Now then, having all that in view, what do we find with regard to the law of the year 1920? The facts about it are familiar.

Hon. Mr. STEVENS: You have not put in the Burrard case.

Mr. O'MEARA: Yes, I state the principle, and I think that will be found to be a correct statement of the principle.

In view of all that, including the momentous matter of the principle of the Burrard case, I come to ask this Committee to fully face what is meant by the law of 1920 empowering the Governor General in Council to carry into effect the McKenna agreement, which Mr. Newcombe said in his opinion, in so many words, involves a final adjustment of all matters relating to Indian affairs in British Columbia.

I submit that the Parliament of Canada has not legislative authority for enacting the law that was enacted in the year 1920; and I submit that, even if the Parliament of Canada has such power, that statute is not properly interpreted as being intended for taking away the rights of the Indian tribes. Those are my two submissions with regard to the law which the Parliament of the Dominion of Canada passed in the year 1920.

In support of it, honourable gentlemen, I think perhaps it might be sufficient to refer to the presentation of that matter of legislative jurisdiction with regard to property rights, which was placed before the House of Commons a few days ago by Mr. Bennett. I ask to make reference to that, and I submit that the principle I am now placing before this Committee is the same principle which was relied on by Mr. Bennett in debating the matter of the Ottawa River and the rights of the Province of the legislative jurisdiction of the Parliament of Canada.

Hon. Mr. BARNARD: But those views did not prevail, did they?

Mr. O'MEARA: I am going further and I place before this Committee the principal authorities supporting my submission. From some of those authorities I will read a few words; but these are all authorities—

Hon. Mr. STEVENS: This is the old game, Mr. Chairman, of referring to a case without putting it before us. What is the Burrard case which you speak of? What was the case? I do not mean the title of it, but was it a fishery case or water rights?

Mr. O'MEARA: It is relating to water rights in the interior.

Dr. SCOTT: It related to land within the railway belt.

Mr. O'MEARA: I think so. Anyway the subject was water rights.

Hon. Mr. STEVENS: What were the contentions?

Mr. O'MEARA: If it should be necessary I shall look it up, but I think I can give it sufficiently from this. This is what I put before the officials in Victoria.

"I wish to refer to a few words used by their lordships of the Judicial Committee of the Privy Council, which had a most material bearing upon this matter, and I humbly submit will be found conclusive."

Then I gave the reference to the Burrard case, Law Reports Appeal Cases 1911, page 94, and these words are quoted: "Their Lordships are of opinion that the judgments of the Courts of Appeal are right. The grants of public land undoubtedly passed the water rights incidental to those grants."

It is on the same matter that I referred to the case generally known as the Fisheries Case, reported in 1914 Appeal Cases. I was intending to give a reference to the principal authorities upon that, and I was intending to read a few words taken from them.

The CHAIRMAN: We cannot allow you the time to read them.

Mr. O'MEARA: Then, I will put before you the references.

Hon. Mr. STEVENS: That decision was accepted by both Parliaments, and later an Act was passed by the Dominion Parliament, reconveying the right of administration of the water power in the railway belt to the province. They considered that settled that part of it. It is not necessary to go over it again.

Mr. O'MEARA: May I give a reference to this case, of the Attorney General of Canada vs. the Attorneys General of Provinces, Law Reports 1898, Appeal Cases, page 700, and especially at pages 709, 712 and 713.

The next case is Attorney General for British Columbia vs. Attorney General for Canada, Law Reports 1914, Appeal Cases 753.

The next case is Attorney General of Canada vs. Attorney General for Quebec, Law Reports 1921, Appeal Cases, Vol. 1, page 413. And one more, in Law Reports 1898, Appeal Cases at page 709, which contains Lord Herschell's judgment on this whole matter.

What I submit as a result of these cases to which I have given reference is this, that there is a broad distinction between property rights and legislative jurisdiction. I submit that in passing the enactment of the year 1920, the Parliament of Canada was seeking to deal with the matter of property rights.

That is all that I have to place before your honourable Committee.

Mr. MCPHERSON: Mr. Chairman, as to these cases that have been quoted, I wish to place something on the record. Mr. O'Meara referred to two cases, and asked us to consider them closely. I have read the full judgment in the African case, which has been referred to as the Southern Nigeria case. I just want to draw to the attention of the Committee that that was a case in which the basis of the argument was as to whether the chief of the tribe had a right to collect only partial duties, annual duties as it were, or dues, and not full compensation as the owner of the land for the tribe. The case decided that he was entitled to receive full compensation. Now, in that there were some remarks made by his lordship, Viscount Haldane, as to general British principles in connection with aboriginal titles. They are not part of the judgment, but only his remarks regarding them the world over, and happily he mentions in that very case the fact that the Privy Council had already explained elsewhere the principles that guided it in connection with Indian tribes and their right to reserve lands in Canada. The case he refers to is the other one cited by Mr. O'Meara, the St. Catherines Milling and Lumber Company vs. the Queen, in which the judgment was delivered by Lord Watson. In that judgment his lordship states as a matter of fact, this clause:—

By an article of treaty it is stipulated that subject to such regulations that may be made by the Dominion Government, the Indians have the right to pursue their avocations of hunting and fishing, throughout the surrendered territory, with the exception of those portions of it which may from time to time be taken up for settlement, mining, lumbering or other purposes.

Now, that is all the reference there is to the Indian title, and the balance of the case was based upon whether the province of Ontario had control of the lumbering rights, or the Dominion Government. The Dominion Government had issued a lumbering license and the rest of the case is devoted to deciding which Government could collect those duties. It was held that the province of Ontario had full control, not only of the lands, but of the lumbering also. That is all there is in that case, and it conclusively extinguishes the Indian rights to the lumbering in that territory. The treaty speaks for itself. Even their hunting rights disappear when it is used for other purposes.

Mr. KELLY: Mr. Chairman, I notice that the hour of adjournment is just arriving, but before concluding, I would like to say something which has been omitted, and I think it is of too great importance to be overlooked. I think it brings before us in a very definite way the subject of the argument of this morning. This is Governor Douglas to the Secretary of State for the Colonies, Despatch No. 24, dated Victoria, March 25, 1861. It is set out here in full, and the answer thereto is also given. I would like to put that on record, with the permission of the Committee.

The CHAIRMAN: Yes, read it. Do you want to put in the two despatches?

Mr. KELLY: Yes, this first despatch occupies a page.

The CHAIRMAN: Is it the pleasure of the Committee that these documents should be put on record?

Hon. Mr. STEVENS: Both despatches should go in.

The CHAIRMAN: It is hardly necessary to read them.

Hon. Mr. STEVENS: No, I do not think so.

Mr. KELLY: You have still minutes, Mr. Chairman, and I can get through in three if you will allow me.

The CHAIRMAN: Very well, proceed.

Mr. KELLY (reads):

Governor Douglas to the Secretary of State for the Colonies

VICTORIA, March 25, 1861.

MY LORD DUKE,—

"I have the honour of transmitting a petition from the House of Assembly of Vancouver Island to your Grace, praying for the aid of Her Majesty's Government in extinguishing the Indian title to the public lands in this Colony; and setting forth, with much force and truth the evils that may arise from the neglect of that very necessary precaution.

2. As the native Indian population of Vancouver Island have distinct ideas of property in land, and mutually recognize their several exclusive rights in certain districts, they would not fail to regard the occupation of such portions of the Colony by white settlers, unless with the full consent of the proprietary tribes, as national wrongs; and the sense of injury might produce a feeling of irritation against the settlers, and perhaps disaffection to the Government that would endanger the peace of the country.

3. Knowing their feelings on that subject, I made it a practice up to the year 1859, to purchase the native rights in the land, in every case, prior to the settlement of any district; but since that time in consequence of the termination of the Hudson's Bay Company's Charter, and

the want of funds, it has not been in my power to continue it. Your Grace must, indeed, be well aware that I have, since then, had the utmost difficulty in raising money enough to defray the most indispensable wants of Government.

4. All the settled districts of the Colony, with the exception of Cowichan, Chemainus, and Barclay Sound, have been already bought from the Indians, at a cost in no case exceeding £2 10s. sterling for each family. As the land has, since then, increased in value, the expense would be relatively somewhat greater now, but I think that their claims might be satisfied with a payment of £3 to each family; so that taking the native population of those districts at 1,000 families, the sum of £3,000 would meet the whole charge.

5. It would be improper to conceal from your Grace the importance of carrying that vital measure into effect without delay.

6. I will not occupy your Grace's time by any attempt to investigate the opinion expressed by the House of Assembly, as to the liability of the Imperial Government for all expenses connected with the purchase of the claims of the aborigines to the public land, which simply amounts to this, that the expense would, in the first instance, be paid by the Imperial Government, and charged to the account of proceeds arising from the sales of public land. The land itself would, therefore, be ultimately made to bear the charge.

7. It is the practical question as to the means of raising the money, that at this moment more seriously engages my attention. The Colony being already severely taxed for the support of its own Government, could not afford to pay that additional sum; but the difficulty may be surmounted by means of an advance from the Imperial Government to the extent of £3,000, to be eventually repaid out of the Colonial Land Fund.

8. I would, in fact, strongly recommend that course to your Grace's attention, as specially calculated to extricate the Colony from existing difficulties, without putting the Mother Country to a serious expense; and I shall carefully attend to the repayment of the sum advanced, in full, as soon as the Land Fund recovers in some measure from the depression caused by the delay Her Majesty's Government has experienced in effecting a final arrangement with the Hudson Bay Company for the reconveyance of the Colony, as there is little doubt when our new system of finance comes fully into operation that the revenue will be fully adequate to the expenditure of the Colony.

I have, etc.,

(Signed) JAMES DOUGLAS.

Now, I put that on record as proving the policy pursued up to that time in the Colonial days, which is clearly embodied in that. Shall I read the reply thereto?

Mr. MCPHERSON: It also proves something else, that the value of the land was £3,000.

Mr. KELLY: $15 per family.

Mr. O'MEARA: That is not material.

Hon. Mr. MCLENNAN: And all Vancouver Island had been bought except those three districts.

Mr. PAULL: No, not all Vancouver Island, around Cowichan had been bought.

Mr. KELLY: It says the settled districts of the Colony, with the exception of Cowichan, Chemainus, and Barclay Sound.

Hon. Mr. MCLENNAN: Will you read the reply?

Mr. KELLY: The reply is as follows:

The Secretary of State for the Colonies to Governor Douglas, C.B.

DOWNING STREET,
October 19, 1861.

SIR,—I have had under my consideration your despatch No. 24, of the 25th of March last, transmitting an Address from the House of Assembly of Vancouver Island, in which they pray for the assistance of Her Majesty's Government in extinguishing the Indian Title to the public lands in the Colony and set forth the evils that may result from a neglect of this precaution.

I am fully sensible of the great importance of purchasing without loss of time the native title to the soil of Vancouver Island; but the acquisition of the title is a purely colonial interest, and the Legislature must not entertain any expectation that the British taxpayer will be burthened to supply the funds or British credit pledged for the purpose. I would earnestly recommend therefore to the House of Assembly, that they should enable you to procure the requisite means, but if they should not think proper to do so, Her Majesty's Government cannot undertake to supply the money requisite for an object which, whilst it is essential to the interests of the people of Vancouver Island, is at the same time purely Colonial in its character, and trifling in the charge that it would entail.

I have, etc.,
(Signed) NEWCASTLE.

Mr. KELLY: Another thing, Mr. Chairman: At the request of Mr. O'Meara I think you commanded Mr. Chisholm to bring a memorandum here?

The CHAIRMAN: No, I did not command Mr. Chisholm to do anything I asked Mr. Chisholm to attend here.

Mr. KELLY: I am sorry. You asked Mr. Chisholm to be here, to bring the memorandum which was prepared for Sir Wilfrid Laurier. Was not that it?

The CHAIRMAN: I do not know anything about a memorandum. I asked Mr. Chisholm to be present at this session of the Committee. If you want to ask Mr. Chisholm any questions, he will answer them.

Mr. KELLY: Then, may I ask Mr. Chisholm for a memorandum prepared by the Hon. Mr. Newcombe for Sir Wilfrid Laurier, in June, 1910.

Mr. CHISHOLM: This memorandum was prepared by Mr. Newcombe for Sir Wilfrid Laurier, who was then Prime Minister. It contains an outline of the respective claims made by the Dominion and the Province, and the Indian claims now under consideration. It also contains certain views expressed by Mr. Newcombe about each claim. I am quite sure that it was never intended to be produced and given to the public.

Hon. Mr. MURPHY: How has Mr. O'Meara obtained knowledge of it then?

Mr. CHISHOLM: I do not know.

Mr. O'MEARA: Dr. Scott brought it forward Mr. Chairman.

Mr. CHISHOLM: He mentioned it to me yesterday, when he came over to the Department. I do not know how he has any knowledge about the existence of the document. I submit that it is not in the public interest to have this memorandum produced. Litigation may arise at any time between the province and the Dominion or on the Indian claims, and the legal views expressed in regard to the claims should not be produced.

Hon. Mr. MURPHY: It is a memorandum for the information of Sir Wilfrid Laurier.

Mr. CHISHOLM: That is all. It was really confidential, although it is not so marked.

Hon. Mr. MURPHY: Does your Department regard such documents as confidential when exchanged between the Department and the Prime Minister of the day?

Mr. CHISHOLM: Certainly, the same as a memorandum from an officer of the Department to the Minister.

The CHAIRMAN: That document has never been brought down to the House or the Senate?

Mr. CHISHOLM: No, Mr. Chairman, not even the Indian Department had it until I gave a copy to Dr. Scott yesterday.

Mr. MCPHERSON: At best, it is the legal opinion of Mr. Newcombe.

Mr. CHISHOLM: It gives a short outline of sales in the different parts of the country.

Hon. Mr. MURPHY: Is it a narrative of fact about the position of affairs as it stood between the Dominion Government, the Provincial Government and the Indians?

Mr. CHISHOLM: Yes.

Mr. KELLY: Mr. Chairman, since we consider that of importance, in view of what has been said, we do not ask for a public exhibition of it, but would it not be possible for that document to be submitted to this Committee in camera. We do not wish it to go beyond the bounds of this room. That is all I wish to say, Mr. Chairman.

The CHAIRMAN: The Committee will take up the question of the production of the document just referred to when they come to it.

Hon. Mr. MURPHY: No Minister of the Crown would agree to the production of a document like that. I have held office, and I would not agree to it, if I were in office. I do not think Mr. Stewart would agree to it. It is a private document and if it were submitted to me for information in the capacity of a Minister, I would say that it is not a document for publication.

Hon. Mr. STEVENS: I do not know anything about the document. I have never heard of it until Mr. O'Meara mentioned it.

Mr. PAULL: The reason we desired the introduction of that document, or that we mentioned it, was that Sir Wilfrid Laurier made a statement in British Columbia, after having received the advice of the Deputy Minister, the advice which was contained in the document in question.

Hon. Mr. MURPHY: You do not know whether it was advice, or merely a narrative of facts?

Mr. PAULL: No, until the document can be produced, I do not know that.

Mr. MCPHERSON: Mr. Paull, I think the Committee have intimated that they do not think a statement made by officials as to their own ideas, is binding upon this House. Regardless of what they were based upon, or who made it, we would not accept Sir Wilfrid Laurier's statement, and much less would we regard a memorandum prepared for him.

Mr. PAULL: Would you regard Dr. Scott's memorandum in that light?

Mr. MCPHERSON: I would regard it as not binding on the Dominion of Canada. Any opinion expressed—

The CHAIRMAN: When will the Committee meet again, gentlemen?

Hon. Mr. MURPHY: Is any further evidence to be adduced?

The CHAIRMAN: Have you any further evidence to offer, Mr. Kelly?

Mr. KELLY: No, Mr. Chairman, we have no further evidence.

Mr. MCPHERSON: I think we should meet while everything is fresh in our minds.

The CHAIRMAN: To-morrow morning at ten o'clock then, just the Committee, not to hear further evidence.

The Committee adjourned.

EXHIBIT NO. 6

Filed by P. R. Kelly

Conveyance of land to Hudson's Bay Company

Saanich Tribe—South Saanich

Know all men that we, the chiefs and people of the Saanich Tribe, who have signed our names and made our marks to this deed on the sixth day of February, one thousand eight hundred and fifty-two, do consent to surrender, entirely and for ever, to James Douglas, the agent of the Hudson's Bay Company in Vancouver Island, that is to say, for the Governor, Deputy Governor, and Committee of the same, the whole of the lands situate and lying between Mount Douglas and Cowichan Head, on the Canal de Haro, and extending thence to the line running through the centre of Vancouver Island, North and South.

The condition of or understanding of this sale is this, that our village sites and enclosed fields, are to be kept for our own use, for the use of our children, and for those who may follow after us; and the land shall be properly surveyed hereafter. It is understood, however, that the land itself, with these small exceptions, becomes the entire property of the white people for ever; it is also understood that we are at liberty to hunt over the unoccupied lands, and to carry on our fisheries as formerly.

We have received, as payment, Forty-one pounds thirteen shillings and four pence.

In token whereof, we have signed our names and made our marks, at Fort Victoria, on the 7th day of February, one thousand eight hundred and fifty two.

(Signed) Whut-Say-Mullet his X mark.
and 9 others.

Witness to signatures,

(Signed) Joseph William McKay,
Clerk H.B. Co's. service.

Richd. Golledge, *Clerk.*

Saanich Tribe—North Saanich

Know all men, that we the chiefs and people of the Saanich Tribe, who have signed our names and made our marks to his deed on the eleventh day of February, one thousand eight hundred and fifty-two, do consent to surrender, entirely and for ever, to James Douglas, the Agent of the Hudson's Bay Company, in Vancouver Island, that is to say, for the Governor, Deputy Governor, and Committee of the same, the whole of the lands situate and lying as follows, viz:—commencing at Cowichan Head and following the coast of the Canal de Haro northwest nearly to Saanich Point, or Qua-na-sung; from thence following the course of the Saanich Arm to the point where it terminates; and from thence by a straight line across country to said Cowichan Head, the point of commencement, so as to include all the country and lands, with the exceptions hereafter named, within those boundaries.

The condition of or understanding of this sale is this, that our village sites and enclosed fields are to be kept for our own use, for the use of our children, and for those who may follow after us; and the land shall be properly surveyed hereafter. It is understood, however, that the land itself, with these small exceptions, becomes the entire property of the white people for ever.

It is also understood that we are at liberty to hunt over the unoccupied lands, and to carry on our fisheries as formerly.

We have received, as payment (amount not stated).

(Signed HOTUTSTUN his X mark.
and 117 others.

Witness to signatures,

(Signed) JOSEPH WILLIAM MCKAY,
Clerk H.B. Co's. Service.

RICHD. GOLLEDGE, *Clerk.*

Certified Correct,
W. E. DITCHBURN.

EXHIBIT No. 7
Filed by P. R. Kelly
Copy—59335-5

DEPARTMENT OF JUSTICE

OTTAWA, 17th December, 1913.

Petition of the Nishga Indians of British Columbia

DEAR DR. ROCHE: I have received your letter of 3rd ultimo, enclosing the petition of the Nishga nation or tribe of Indians of the Province of British Columbia to His Majesty in Council.

The claim of the Indians is based upon the proclamation of His late Majesty King George III issued on 7th October, 1763, that is, shortly after the conquest of Quebec, a time of course, long antecedent to the colonization, or even, it may be said, the discovery of British Columbia. It must, of course, be at least doubtful, whether, under these circumstances, the general words of the proclamation, which, it may be reasonably supposed, related only to Canada as then known, can be taken as having anything to do with the Indians of British Columbia. It is necessary for the petitioners' case, and in the seventh paragraph of their petition it is alleged, that the territory now known as British Columbia is all part of the Indian territories referred to in the proclamation.

You ask for my opinion as to the right of the Indians to present the petition, and as to what effect the support of the Dominion would have upon the legal questions involved.

I should be disposed to think that the Imperial Government would not be inclined to initiate proceedings for the determination of the Indian claim, if there be a remedy by proceedings, in the local courts, nor can I see any reason why the claim should not be determined locally if the Government of Canada should determine to press it.

I may remind you that it was the declared policy of our predecessors in office to submit to the courts for decision the question of the aboriginal title which is the subject of this petition and has been for some years agitated in British Columbia. Questions with that object in view were framed for reference to the Supreme Court of Canada, but the proposed reference fell through because the Government of British Columbia would not agree to the submission. Afterwards the Indian Act was amended by the enactment of subsection 1 of section 73A as it now stands under section 4 of chapter 14 of 1911. By the provisions of this enactment it is competent to His Majesty to proceed in the Exchequer Court or in the Supreme Court of British Columbia to recover possession of lands for the benefit of the Indians, and the enactment was devised to provide a means or convenient procedure for the determination by the courts of the questions which are raised by this petition.

The agreement of 24th September, 1912, between representatives of the Dominion and British Columbia, which was approved by Order in Council of 27th November following, appears to evince a departure from the policy of the late Government. It is recited in the preamble that it is desirable to settle all differences between the Governments of the Dominion and the provinces respecting Indian lands and Indian affairs generally in British Columbia, and upon this recital the stipulations or proposals of the agreement are said to be agreed upon as final adjustment of all matters relating to Indian affairs in the province. The agreement, while it provides for the ascertainment of the various Indian reserves and the disposal thereof, or confirmation of the titles in the manner therein provided, makes no reference to the aboriginal title, and it may be considered that it would be incompatible with the intention of the agreement that the Dominion should maintain the cause of the Indians in respect of the aboriginal title, seeing that this title is ignored by the agreement and that the proposals or stipulations of the agreement are declared to have been agreed upon as a final adjustment of all matters relating to Indian affairs in the province.

I think, therefore, that the policy of the Government in relation to the matter is a preliminary question to be determined. If the Government proposes to maintain the claim of the Indians, it would be advisable to institute proceedings in a proper case under the statute to which I have referred, and the case could then be carried if necessary on appeal to the Judicial Committee with the advantage of the opinions of the local courts as in ordinary cases. If the Government do not propose to uphold the claim, I think that the inadvisability of making any reference of this petition should be represented to the Colonial Office; and the Indians would in consequence presumably be left without any intervention or support from this Government, and in face of the deliberate opposition of the Government of British Columbia, to pursue such legal remedies on their own behalf and at their own expense as the very meagre prospects of the situation might afford.

Upon the merits I think the Indian claim is a very doubtful one, but I am not prepared to say that it is not without sufficient foundation to justify consideration by the courts.

I am retaining the petition, of which I daresay you have another copy, but if you require it to be returned, please let me know.

Yours sincerely,

(Signed) CHAS. J. DOHERTY.

The Hon. W. J. Roche, M.D., M.P.,
Minister of the Interior,
Ottawa.

EXIBIT No. 8

Filed by A. D. Macintyre

ALLIED INDIAN TRIBES OF BRITISH COLUMBIA, CANADA

Andrew Paull,
Secretary Executive Committee,
North Vancouver, B.C.

Rev. P. R. Kelly,
Chairman Executive Committee,
46 Gillespie St., Nanaimo, B.C.

Circular Letter to the Tribes

Dear Friends—At the conclusion of our conference with the Hon. Chas. Stewart, Minister of the Interior, held in the city of Vancouver on the 27th day of July this year, and continued with Dr. Duncan C. Scott, Deputy Superintendent General of Indian Affairs, in the city of Victoria, which was concluded on the 11th of August, it was decided by the Executive Committee to send a letter to the Tribes informing them of the claims made by the Committee on

behalf of all the Indians of this province. Great pains were taken to point out to the representatives of the Dominion Government that the conditions proposed as a basis of settlement are only general in character. When the Governments accept these conditions in principle, the Committee requested that a Commission be appointed on which the Allied Tribes would have equal representation, said Commission to arrange the particulars of these conditions.

We have firmly declined to accept a settlement, based on the Order in Council of the 20th of June, 1914. As the report of the Royal Commission on Indian Affairs is based on this Order in Council, we have strongly objected to its confirmation by the Dominion Government, because it does not satisfy the land requirements of the tribes and also it empowers the Governments to reduce the area of some of the reserves, amounting to 47,000 acres.

We clearly stated that we would be glad to effect a full settlement of the whole question as it now seems probable, but at the same time pointed out very clearly, if negotiations reveal that a settlement satisfying the claims of the Indians cannot finally be arrived at by this method, we would insist on the whole question of Indian Title being submitted to the Judicial Committee of the Privy Council for a decision, such as we have always pressed for, in the past.

We shall not know the result of the Conference until the report has been fully considered and a decision arrived at by the Government of Canada, and whatever decision is arrived at will be communicated to us immediately and of course, the Tribes will be informed of that decision by the Executive Committee.

We submitted the following conditions as a proposed basis of settlement, having in mind the peculiar needs of the different parts of the Province:—

1. All foreshores fronting on said reserves to form part of said reserves.
2. Further Land Grants by the B.C. Government on a basis of 160 acres per capita, as a standard.
3. Unrestricted right to take fish for food purposes.
4. Full rights to fish for commercial purposes off foreshores of Indian reserves.
5. Rights for commercial fishing without license fee, off areas to be especially reserved for that purpose as obtains around Annette Island, Alaska, also the right to troll salmon for commercial purposes without license fee in all the tidal waters of British Columbia.
6. Right to secure license for purse and seine fishing at half usual fee. This privilege is not enjoyed by the Indians.
7. Right to cut timber outside of reserves for fuel and for the manufacture of canoes.
8. Amendment of the Pelagic Sealing Treaty of 1911 to allow the towage of canoes, by gasoline launches, to be used in the capture of seals from the reserves to the sealing grounds.
9. Ample water for irrigation purposes.
10. Unrestricted right to hunting and trapping, and hunting areas to be reserved where necessary.
11. Extension of the present school facilities by high and technical education on equal terms to those available to white residents, also university courses to those who show capability.
12. Free medical and hospital attention and a tubercular sanatorium in the Province.
13. Sufficient grazing areas.
14. Mother's and Widow's pension as effective in B.C. for white women, also Old Age Pension.
15. Cash compensation, to be finally paid within an agreed number of years (this matter to be further considered by the Executive Committee).

16. Reimbursement of about $100,000 spent by the Indians of B.C. in endeavouring to secure a settlement of the Land Title question.

17. Many amendments of the Indian Act were asked for.

During the past year very little money has come from the Tribes, the amounts received did not come up to expectations. The whole amount has been used for current and other expenses of the Executive Committee. The Committee faces heavy and pressing obligations and it is necessary to have funds on hand for any eventuality. In view of the important and critical position the land question has now attained, funds may decide full victory. The Committee must have ample means to take full advantage of any opening to press for success which would make possible the full attainment of the aspirations of the Indian Tribes.

You must realize that the Executive Committee has discharged its responsibilities faithfully and successfully on your behalf, and the least you can do is to give it your support financially so that it may keep on functioning. Where there is no system in vogue for collecting money the Committee recommends that each male and female member of the age of sixteen and over, contribute at least one dollar each. The Committee begs to remind the tribes of this fact; that while certain tribes faithfully bore the heavy financial burdens that were necessary, there were others that did not make any serious effort to assist in this matter. We would urge upon those Tribes the fairness of making more liberal contributions than what is suggested herein.

Above all, the operation of the organization of the Allied Tribes is a necessity in your interest, and its existence is dependent on your financial support, so please realize your responsibilities.

Please send all contributions to the Chairman and Treasurer of the Allied Indian Tribes of B.C. who is Rev. P. R. Kelly, 46 Gillespie street, Nanaimo, B.C., and thanking you in advance, on behalf of the Executive Committee of the Allied Indian Tribes of B.C.

Sincerely,

P. R. Kelly,
Chairman Executive Committee,
46 Gillespie St., Nanaimo, B.C.

Andrew Paull,
Secretary Executive Committee,
North Vancouver, B.C.

Vancouver, B.C., September 12, 1923.

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C. Excerpt from British Columbia papers relating to the Indian Lands question, page 160, 1875-1878, Report of the Acting Minister of the Interior to the Governor-in-Council, dated 10-11-1875, 46-49.

D. Statement of expenditure on account of Indians in B.C. from 1871-1926, by the Department of Indian Affairs, 50-51.

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Copy of letter from Mr. B. W. Pearse to the Chief Commissioner of Lands and Works in B.C. reporting on Indian reserves, dated 21-10-1868, 227-228.

Copy of letter from Governor Douglas to the Secretary of State for the Colonies, dated 25-3-1861, *re* compensation for loss of lands, 236-237.

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No. 2. Copy of circular letter to all tribes comprising the Alliance in which the authority of the General Counsel of the Alliance is specifically confirmed, dated 2-12-26, filed by Mr. O'Meara, 114-115.

No. 3. Statement comprising introductory notes for the Parliament of Canada prepared by the general counsel of Allied Indian Tribes, read into the record by Mr. O'Meara, 81-82.

No. 4. List of Indian Tribes comprising the Allied Indian Tribes of British Columbia, filed by Andrew Paull, 175-176.

No. 5. Names of Indian Chiefs and their reserves of the Interior of British Columbia represented by Chief Johnny Chillihitza, hereditary chief of the Okanagan tribes, filed by A. D. MacIntyre, 176.

No. 6. Copy of deed of sale and agreement of sale by Saanich Tribe to Hudson's Bay Company, dated 6-2-1852, filed by Rev. P. R. Kelly, 240-241.

No. 7. Copy of a letter from the Minister of Justice to the Minister of the Interior *re* Petition of the Nishga Indians of B.C., dated 17-12-13, filed by Rev. P. R. Kelly, 241-242.

No. 8. Copy of circular letter to Allied Indian Tribes of B.C., from the executive of the Tribes, *re* claims against the government, dated 12-9-23, filed by Mr. A. D. MacIntyre, 242-244.

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